FILE COPY.

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 11 ORIGINAL.

STATE OF LOUISIANA, *Complainant,*

versus

STATE OF MISSISSIPPI, *Defendant.*

SUPPLEMENTAL BRIEF FOR COMPLAINANT ON DEMURRER.

It will be remembered that on March 2, 1903, at the time of the submission of the Demurrer to the Court, Louisiana had not yet received the brief of the State of Mississippi, and the brief which we then submitted had therefore been prepared without the advantage of a knowledge of the arguments that Mississippi's able counsel would use in support of its Demurrer. Now that by the delay of twenty days granted by this Court, we have had an opportunity to carefully consider Mississippi's brief, and prepare our supplemental reply thereto, we find that to a very great extent we had anticipated the line of defendant's argument, and it therefore but remains for us to recapitulate our original reasons for urging that the Demurrer of defendant is not well founded, either in law or in fact.

The only proper questions that can be said to be at issue on Demurrer, are:

1st. Does the Bill of Complaint set forth that the State of Louisiana makes its appearance through its proper officer?

2d. Is there a cause of action within the jurisdiction of this Honorable Court set forth in the Bill of Complaint?

The Bill of Complaint is self-sufficient in its answer to both of these tests.

The State appears in the persons of its Governor and Attorney General, and there is no denial that these gentlemen really fill the offices they claim to occupy. The Bill of Complaint sets forth a claim to a certain boundary line, which it alleges the State of Mississippi denies (paragraphs 10, 18, 19, 21, 22, 26, 27, 28). The denial by Mississippi of Louisiana's pretensions is shown not only in the Bill by the action of the Mississippi Advisory Boundary Commission, but also in the Laws of Mississippi for the year 1902, by the action of the Governor and the Legislature of the State of Mississippi on the said Report.. If Mississippi as a State did not propose to approve, confirm and coincide in this denial of Louisiana's claim, it could easily have repudiated the findings of its Advisory Boundary Commission, or kept the matter open for further consideration.

It is a specious argument to say that Mississippi is being drawn unwillingly into this litigation. How easy could she cleanse her own hands and purge her own conscence by admitting Louisiana's boundary claim, if she does not dispute it. Why demurr when she could meet this issue on the merits without cost or trouble to herself by admitting Louisiana's claims, if she does not deny them? But no; the fact is that Mississippi as a State did then, and does now, dispute the correctness of Louisiana's construction of the Acts of Congress, and this appears even from the brief now filed by her able counsel wherein they say:

"We do not understand that any claim has been, or will be made by Mississippi to any of the mainland of Louisiana, but, whatever *islands* that are within six leagues of her shore, at

any point, belong to her and she should have them. It is immaterial to the present contention that land owners on Half Moon Island or Isle a'Pitre, deraign their titles through the State of Louisiana."

The Bill of Complaint and its annexed Exhibits show that these two islands, Half Moon Island and Isle a'Pitre, are not only within nine miles of the Louisiana, but are also within eighteen miles of the Mississippi shōre line, and although Lousiana in her Bill of Complaint alleges specific title to them, Mississippi claims that all of that does not count as they belong to her because within eighteen miles of her shore line, regardless of their position relative to Louisiana.

This therefore is certainly a boundary dispute between the two States.

We have carefully noted the other provisions of defendant's brief, and we find they bear almost entirely on the merits of the case, a subject certainly not to be considered on Demurrer.

Counsel's reference, however, to Act No. 65 of the Legislature of Louisiana for the year 1884 and his admission that it authorizes the Attorney General of Louisiana to defend the State's interests is a concession of our own contention, for, to properly defend a State's interests, it is as often necessary to appear as plaintiff or complainant as it is to appear as defendant.

By their reference to the action of the Governor and Legislature of the State of Mississippi on the Report of its Advisory Boundary Commission, counsel for Mississippi also concede the admissibility, and the right of this Honorable Court to consider this subject in passing upon its Demurrer. It is then in evidence that the State of Mississippi did not repudiate this denial of Louisiana's boundary claim, but by its silence and inaction permitted the dispute to reach this Honorable Court for settlement.

We respectfully submit that the construction of the Acts of Congress creating the two States, is part of the merits of the case, and we therefore forbear from showing the fallacy of counsel's argument in relation thereto, while we are still on the Demurrer.

The same reasoning applies to counsel's extended argument on the subject that the State of Louisiana cannot maintain a suit for the benefit of individuals. We have shown that it is not the interests of individuals that are involved; that there is a boundary controversy here; that both States have a direct pecuniary interest in the controversy, and that the sovereignty of Louisiana is involved as to the territory in question. If these allegations are not true as facts, that is a matter to be proved by the State of Mississippi when the merits of the case are reached and are not to be considered on Demurrer.

We therefore, for the foregoing reasons, and for those set forth in our previous brief, respectively urge, that the State of Louisiana appears before this Honorable Court properly represented and presents for judicial determination a boundary controversy fully within its jurisdiction, and that the Demurrer should therefore be overruled, and the State of Mississippi compelled to answer Louisiana's Bill of Complaint as justice and equity may require.

Respectfully submitted,

WALTER GUION,
Attorney General of Louisiana.
JOHN DYMOND, JR.,
ALBERT ESTOPINAL,
ALEXANDER PORTER MORSE,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1903.

Original No. II.

THE STATE OF LOUISIANA,
COMPLAINANT,

versus

THE STATE OF MISSISSIPPI,
RESPONDENT.

IN EQUITY.

GENERAL REPLICATION AND ANSWER TO CROSS BILL.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The State of Louisiana, repliant, saving and reserving unto herself all advantage of exception to the insufficiencies of the answer of the State of Mississippi herein, for replication thereunto says: that she will aver and prove her bill of complaint in this cause to be true, certain, and sufficient in the law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied to; all of which this repliant is and will be ready to aver and prove as this Honorable Court shall direct, and prays as in and by her said bill she has already prayed.

And further, the said State of Louisiana, now and at all

times hereafter saving and reserving unto herself all benefit and advantage of exception which can or may be had or taken to any errors, uncertainties, or other imperfections contained in so much of the answer of the State of Mississippi, herein, as may be deemed a cross bill herein, and also the right to make further answer thereto, if the same should become necessary, for answer to said cross bill of the State of Mississippi, says she denies:

I.

That the fixing of the southern boundary of the State of Mississippi by Section 2, Chapter 23, of the Acts of the Congress of the United States, creating said State and approved March 1, 1817, found in Vol. 3, page 348, of the Statutes at large, quoted in full in paragraph one (1) of Respondent's cross bill, certainly and indisputably fixed and designated said southern boundary, as alleged and averred by Respondent, but Repliant avers that if the construction of said act sought to be placed theron by Respondent be true, and that Act did purport so to do, which is denied, Repliant avers that said Act in said respect would be in violation of, and contrary to, the Constitution of the United States, in as much as said Act would include in the boundaries of the State of Mississippi the islands, adjacent waters, and territory in dispute and controversy in this cause, which islands, adjacent waters, and territory had theretofore been by the Act of Congress, Chapter Fifty of the United States Statutes at large, Volume 2, page 701, approved April 8th, 1812, admitting the State of Louisiana into the Union, included within the boundaries of the State of Louisiana, by the provisions of said Act, and Repliant avers and alleges that if the Act of Dec. 10, 1817, admitting the State of Mississippi into the Union, is to be construed and interpreted as covering and including the said islands, adjacent

waters, and the territory in dispute and in controversy herein, that said Act is void, unconstitutional and of no effect in so far as the islands, territory and waters in dispute and controversy herein, are concerned, for the reason that said Act is and would be in violation of, and contrary to, Section 3, Article IV, of the Constitution of the United States, which Section and Article prohibit the transfer of any part of the territory of one State to another adjacent State without the consent of the legislature of the two States, which consent the legislature of the State of Louisiana has never granted or given, for the reason that the Act of Congress of 1812, admitting the State of Louisiana into the Union, placed said territory herein in controversy within the boundary lines, and under the sovereignty and jurisdiction of the State of Louisiana.

II.

Repliant further answering, especially denies that the claim set forth in the second paragraph of Respondent's cross bill, that the islands, and territory herein in dispute and controversy belong to, or are included within the lawful boundaries of the State of Mississippi for the reasons set forth in paragraph one (1) of this answer, and Repliant further especially and particularly denies that the limits of the State of Louisiana are to be defined and delimited from the "mainland" of said State, as claimed by Respondent, but are to be defined, determined and delimited from the islands, as the "coast" of the State of Louisiana.

III.

Repliant further answering to the cross bill of Respondent, denies the allegations and averments contained in Respondent's third (III) paragraph of the cross bill, but Repliant avers and alleges on the contrary that the

southeastern boundary of the State of Louisiana, in so far as the territory in dispute and controversy herein is concerned, is governed and fixed by the Act of Admission of the State of Louisiana into the Union, in 1812, by which all islands within three leagues of the coast were included within said State, and that the boundaries therein set forth must be taken and held as the true boundaries of the State of Louisiana, being prior in time to the boundaries of the State of Mississippi, fixed on the admission of that State into the Union on December 10, 1817, and for the additional reasons hereinbefore set forth in Repliant's answer to the cross bill of Respondent, in paragraphs one (1) and two (2) of this answer; and Repliant further avers that there is now and always has been a well-defined and continuous coast line of the southeastern coast of the part of Louisiana herein in dispute and controversy, extending eastward as far as the eastern extremity of Isle a Pitre, intersected only by the several bayous found therein.

IV, V, AND VI.

Repliant, further answering to paragraphs (IV) four, (V) five and (VI) six, of Respondent's cross bill, denies the truth and correctness of the allegations thereof, except in so far as is hereinafter especially admitted, but Repliant only admits that the Act of Congress of May 14th, 1812, set forth in the (V) fifth paragraph of Respondent's cross bill, was passed and enacted at that date, but Repliant alleges and avers that said Act only became a law on the 14th day of May, 1812, (14) fourteen days after the 30th of April, 1812, at which prior date the State of Louisiana had been admitted to the Union and its boundaries defined and delimited, and said Act of May 14th, 1812, could not, and did not, change the boundaries or territory of the State of

Louisiana, for the reasons already hereinbefore set forth in this Repliant's answer to the cross bill in paragraphs one (I), two (II) and three (III), of this answer. And that in truth and fact the southern portion of the said Mississippi territory as claimed by respondent was not even then in possession of the United States, and did not extend south of the thirty-first degree of north latitude, and did not reach or touch the Gulf of Mexico or Mississippi Sound, for it was only on February 12th, 1813, that the Congress of the United States, U. S. Statutes at large, Vol. 3, p. 472, passed "An Act authorizing the President of the United States to take possession of a tract of country lying south of the Mississippi territory and west of the River Perdido." This Act was not published until 1818. It declared that the country called West Florida, which lay west of the Perdido River, was not then in possession of the United States, and the Act was not published till 1818, evidently for fear of the effect its passage might have had on the Government of Spain, with which the United States was then negotiating a treaty relative to that territory, as is similarly shown by the general resolutions on the relation of the United States to Spain, U. S. Statutes at large, Vol. 3, p. 471-472, approved January 15th, 1811, and March 3, 1811, but not published until after April 20, 1818, in which the President of the United States was specially instructed not to publish same unless he deemed it wise to do so.

VII.

Repliant further answering unto paragraph seven (VII) of Respondent's cross bill, denies the averments and allegations therein set forth, and Repliant avers and alleges in contradiction thereof that the acknowledgment of the true boundaries of the State of Louisiana by the officers of the

United States Government are binding as showing that the territory here in dispute and in controversy has always been considered by the Federal Government, and its officers, as being a part of the territory of the State of Louisiana, and Repliant further alleges and avers that all the cartographers who have made maps of Louisiana and Mississippi from a date shortly after the acquisition of Louisiana by the United States, have placed and delineated on all of said maps from the year A. D. 1806, up to the present year, the territory in dispute herein as belonging to Louisiana, and forming a part of its territory, and Repliant further alleges and avers that the government and officers of the State of Mississippi, and of the County of Hancock in said State, have repeatedly officially recognized the territory in dispute and controversy herein as the territory of, and belonging to, the State of Louisiana:

1st—On Hardee's Geographical and Statistical Map of Mississippi, embracing portions of Tennessee, Alabama, Louisiana and Arkansas, from recent surveys and investigations and officially compiled for the State of Mississippi, and paid for by appropriation from the Treasury of the State of Mississippi, all under Statutes of the State of Mississippi, which map was officially approved by the then Governor of the State of Mississippi, in writing, on the face of said map, which official map was published and promulgated in the year 1868, and a second edition in 1872.

2nd—On the official map of the State of Mississippi, published in accordance with an Act of the Mississippi State Legislature, approved March 8th, 1882, by the Mississippi State Board of Immigration and Agriculture, prepared under the direction of E. G. Wall, in 1883.

3rd—On a sectional map of Mississippi compiled from the records of the offices of the Surveyor General and of the Board of Immigration and Agriculture of the State of Mississippi, published by Rand, McNally & Co., in 1896, to be found in the office of the Clerk of the Chancery and Circuit Courts of the County of Hancock in the State of Mississippi; and,

4th—A map of Hancock County, Mississippi, compiled by Leland Henderson of Mississippi from the records of the United States and Mississippi Land Offices, which map Repliant is informed and believes was prepared for and approved by the Board of Supervisors of the County of Hancock, State of Mississippi, by virtue of the powers invested in said Board by the laws of said State, and by divers other official maps prepared, approved, published and issued by competent authority of State and county officers of the State of Mississippi, and Repliant avers that on all of said official maps of Mississippi, the islands, waters adjacent and territory here in dispute and controversy, are delineated and set forth as belonging to, and forming a part of, the territory of the State of Louisiana. Repliant further alleges and avers that if it be conceded, and this Honorable Court should so decide, that the islands and landed territory here in dispute are a part of the territory of the State of Louisiana, it follows that the land and soil underneath said waters, adjacent to said islands are the property of the State of Louisiana, and that said State has full jurisdiction and sovereignty over them. Repliant especially denies that the State of Mississippi has ever "exercised sovereignty and jurisdiction over said waters within eighteen miles of her shore aforesaid, and that her citizens have enjoyed the same for all lawful purposes since her admission into the Union," as alleged and averred by Respondent in paragraph (VII) seven of Re-

spondent's cross bill, but Repliant especially alleges and avers the contrary; that the State of Mississippi has never exercised in any manner whatsoever, any sovereignty over said islands and waters, and Repliant further avers and alleges on information and belief that the citizens of Mississippi have never enjoyed the same for lawful purposes, that is, the taking and obtaining of oysters from said disputed territory, but that it is only in the last few years, when the citizens of Mississippi had, by improvident, careless, and wasteful use of Mississippi's own oyster beds, destroyed or greatly depleted the same, that the said citizens of Mississippi began to trespass on the islands and waters, here in controversy, by taking oysters therefrom, and began to claim any rights in and to the islands and waters here in controversy, that said claims and said trespasses have been resisted by the officers of the State of Louisiana, who at all times have resisted said claims of the State of Mississippi, and the said citizens of Mississippi have been warned off from, and forbidden to use the oyster beds in said territory by said officers of the State of Louisiana. Repliant further avers and alleges that all of said citizens of Mississippi using and trespassing on the territory in controversy herein, always have called and designated, and do now call the territory here in controversy as "the Louisiana marshes" and have no other name for the same.

VIII.

Repliant further answering to the (VIII) eighth paragraph of Respondent's cross bill, alleges: that if, as stated, in that paragraph of Respondent's cross bill "The Congress of the United States, in the early history of the Republic, in dealing with the Gulf Coast or shore and carving States out of the Louisiana purchase, was not perfectly familiar

with said coast or shore line, and as is shown by the several Acts of Congress," then Repliant further avers and alleges that a similar unfamiliarity existed in the minds of Congress when it erected the territory of Mississippi into a State in 1817, and that if Respondent's theory of construction of the Acts of Congress be true, that Congress intended to comprise within the boundary of the State of Mississippi the territory in dispute herein as alleged by Respondent, which, however, is denied, then it was on account of said unfamiliarity that Congress failed to recognize the fact that in placing within the jurisdiction and boundaries of that new State "*all the islands within six leagues of the shore to the most eastern junction of Pearl River with Lake Borgne,*" that Congress, in the Act of Admission of Louisiana in 1812, five years before had fixed a part of the southeastern boundary of the State of Louisiana as "bounded by said Gulf to the place of beginning, *including all islands within three leagues of the coast,*" and Congress thus failed to realize that in fixing the Southern boundary of the State of Mississippi it was including on the western end of the Gulf boundary, as it approached Pearl River, islands and waters previously put and placed within the southeastern boundaries of the State of Louisiana in 1812, thus producing a conflict by the boundaries of both of the two States covering and including a part of the same territory. Repliant avers and alleges that if, owing to said unfamiliarity of Congress with the geography of the new acquisitions of territory, it, by mistake, attempted to take away from Louisiana a portion of its territory previously allotted to it by the Act of Congress of 1812, such would be in violation of Section three (3), Article IV, of the Constitution of the United States.

IX.

Repliant further answering to paragraph (IX) nine of Respondent's cross bill, alleges and avers that if the allegations of fact in said paragraph contained, in so far as they relate to the organizations of the Gulf Coast counties of the State of Mississippi by the Legislature of that State, and also the Sections of the Revised Code of Mississippi and other codifications of the laws of Mississippi, as therein recited, and that the Supreme Court of Mississippi did decide as therein recited in the case of *Leinhard et al. vs. Harrison County*, as alleged by Respondent, be true, Repliant especially denies that the State of Mississippi, or the local authorities of the Gulf Coast counties of the State of Mississippi, have ever exercised control, jurisdiction or sovereignty over the territory herein in controversy, and Repliant especially denies that the Codes, laws, codifications of the State of Mississippi, and the decision of the Supreme Court of Mississippi cited by Respondent, have any application to, or binding effect on, this Repliant, as the State of Louisiana was not in any way, nor were its citizens, parties to said proceedings, and they were all *res inter alios acta*, and neither the legislative nor judicial branch of the government of the State of Mississippi did have, or could have any jurisdiction over the sovereign State of Louisiana in any way, much less to deprive said State of any of its rights, claims or territory; and in all other respects, as to the allegations of fact contained in said paragraph IX, Repliant specially denies the truth thereof.

And the State of Louisiana, as a part of her answer to said cross bill, refers to the original bill herein, and makes every averment thereof a part of this answer, the same as if said averments had been set out at length herein.

And the State of Louisiana for further answer to said cross bill says to any matter or thing in said cross bill con-

tained not herein answered unto, the same is hereby specifically denied.

Wherefore the State of Louisiana prays for relief as in her original bill prayed for; that the Respondent's cross bill be dismissed and for all proper relief in the premises, and for costs of suit.

WALTER GUION,
Attorney General of Louisiana.

JOHN DYMOND, JR.,
F. C. ZACHARIE,
ALBERT ESTOPINAL, JR.,
ALEXANDER PORTER MORSE,
of Counsel.

STATE OF LOUISIANA,
Parish of Orleans.

Personally came and appeared before me, the undersigned authority, William W. Heard, who being duly sworn deposes and says that he is the Governor of the State of Louisiana; that he has read the foregoing replication and answer to the cross bill of the State of Mississippi, and knows the contents thereof, and that the matters and things therein contained and alleged are true as therein alleged and stated to the best of his information and belief.

W. W. HEARD, *Governor.*

Sworn to and subscribed before me, this 30th day of November, 1903.

ALVIN EDWARD HEBERT,
[SEAL] *Notary Public.*

FILE COPY.

Supreme Court of the United States.

Original No. 11.

STATE OF LOUISIANA
COMPLAINANT.

versus

STATE OF MISSISSIPPI,
RESPONDENT.

OCTOBER TERM 1904.

WALTER GUION,
Attorney General.

Palfrey-Dameron Co., Ltd., New Orleans, La.

EXHIBIT P—11

In the Honorable the Supreme Court of the United States,

OBTOBER TERM, 1904.

ORIGINAL No. 11.

THE STATE OF LOUISIANA, Complainant,

versus

THE STATE OF MISSISSIPPI, Respondent,

IN EQUITY.

To the Honorable William Williams, Attorney General of the State of Mississippi, and to the State of Mississippi, represented by Honorable William Williams, Attorney General of said State, herein:

Take notice that this Honorable Court will be moved, for and on behalf of the Complainant, the State of Louisiana, on the 24th day of October, 1904, that Complainant, the State of Louisiana, and Respondent, the State of Mississippi, in the preparation of their evidence for filing and hearing in this cause, will be allowed to respectively offer in separate atlas form, each, the maps offered by them in the preparation of this cause before the Commissioners authorized to take testimony herein, to be prepared under the supervision and direction of the respective

Commissioners of each State, said atlases to be received in lieu of the twenty-five (25) copies of the maps usually required by the rules of this Honorable Court in cases on appeal, or by writ of error, for consideration in the trial of this cause, and for an order in conformity with said motion, as the whole will more particularly and fully appear by a copy of the motion to be filed, which accompanies this notice and is annexed to the same.

New Orleans, October 8th, 1904.

Attorney General of Louisiana.

UNITED STATES OF AMERICA,
STATE OF LOUISIANA,
PARISH OF ORLEANS.

On the 11th day of October, 1904, I served the within notice, together with the annexed motion and exhibits, on William Williams, Attorney General of the State of Mississippi, of counsel for the State of Mississippi in this cause, by handing copies of the same to him personally, in his, the Attorney General's office, in the City of Jackson, and the State of Mississippi.

Sworn to and subscribed before me,
this 12th day of October, 1904.

Notary Public.

Supreme Court of the United States.

Original No. 11.

STATE OF LOUISIANA
COMPLAINANT.

versus

STATE OF MISSISSIPPI,
RESPONDENT.

OCTOBER TERM 1904.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

On motion of the State of Louisiana, Complainant, represented herein by Walter Guion, Attorney General of the State of Louisiana, and,

Upon suggesting and showing to this Honorable Court that the State of Louisiana has already disbursed in costs, in this proceeding, the sum of Twenty-Seven Hundred and Fifty-Two and 16-100 ($2752.16) Dollars, as will more fully appear from Exhibit P-1, hereto annexed and made part of this motion, and has incurred a further expense for costs in this suit, not yet paid, amounting to Twenty-Two Hundred and Forty-Three and 58-100 ($2243.58)

Dollars, as will more fully appear from Exhibits P-2, P-3, P-4, and P-5, hereto annexed and made part of this motion, and that the record, as made up, will embody the following evidence on the part of the State of Louisiana, to-wit:

Fourteen hundred and fifty (1450) legal cap typewritten pages of testimony;

Seventy-seven (77) maps of various sizes;

One hundred and four (104) documents;

Seventeen (17) exhibits;

Five (5) diagrams;

Two (2) samples of earth,

all of which will more fully appear from Exhibits P-6 and P-7 hereto annexed and made part of this motion.

And upon suggesting and showing to this Honorable Court that copies of all such maps, documents, testimony, and other evidence, have been regularly furnished to the State of Mississippi as the same were, from time to time, offered, for filing by said Commissioner, as will more fully appear from Exhibit P-8, hereto annexed and made part of this motion; and,

Upon further suggesting and showing to this Honorable Court that it is estimated by the clerk of this Honorable Court that the printing of the testimony and other evidence, except maps, of the State of Louisiana in the number of copies usually required in cases of appeal and writs of error, would involve an expense of about Two Thousand ($ 2000) Dollars, as will more fully appear from Exhibit P-9 hereto annexed and made part of this motion, and making a total amount of expense already incurred, and to be necessarily incurred, of

six thousand, nine hundred ninety five ($6,995)
Dollars; and 24/100

Upon further suggesting and showing to this Honorable Court that it is estimated that to reproduce twenty-five (25) copies of the seventy-seven (77) maps offered in evidence by the State of Louisiana in this cause, would involve an additional expense of about Seven Thousand ($7000.00) Dollars, an amount almost prohibitive in its nature and for which latter item no adequate and sufficient appropriation has been made by the Legislature of the State of Louisiana, it in fact being impossible to reproduce faithful and correct copies of some of said maps owing to their age and condition, all of which will more fully appear from Exhibit P-10, hereto annexed and made part of this motion; and,

Upon further suggesting and showing to this Honorable Court that the ends of justice would be as well subserved by permitting each State, complainant and respondent herein, to offer one copy of each of its maps, all of the maps of the State of Louisiana to be bound in one atlas, and all of the maps of the State of Mississippi to be likewise bound in one atlas, for use in the trial of this cause.

And upon further suggesting and showing to this Honorable Court that the State of Mississippi, through its Attorney General, has been duly notified of the intention of the State of Louisiana, through counsel, to make this motion and application as will more fully appear from Exhibit P-11, hereto annexed and made part of this motion.

And thereupon the State of Louisiana moves that it be ordered that the States of Louisiana and Mississippi be respectively permitted to, each, offer its

maps in atlas form, an atlas for each State, the respective atlases to contain one copy of each of the maps offered in evidence herein by that State, said atlases of maps to be prepared by the respective commissioners appointed by this Honorable Court, and to be returned to this Honorable Court by the said respective commissioners when making returns under their commissions, and the clerk of this Honorable Court be directed to receive said atlases as being a full compliance with the requirements of this Honorable Court on the subject of this map evidence in preparing the record in this cause for trial and submission.

Attorney General of Louisiana.

EXHIBIT P—1.

Statement of amount disbursed for costs of Court in the suit of the State of Louisiana vs. the State of Mississippi.

1903 July 21,	A. P. Morse, services as asst. counsel	$100 00
" Dec. 16,	American Printing Co. for printing briefs	15 00
1904 March 18,	Walter Guion, for copies of maps, etc,	287 34
" April 1,	Walter Guion, for costs	28 00
" " 2,	V. Loisel, U. S. Marshal serving subpoenas	50 00
" April 4,	Bank of Baton Rouge, costs	240 10
" " 15,	F. H. Mortimer, Com witnesses's fees	50 00
" April 16,	Walter Guion, for four bills	46 70
" " 18,	W. C. Hodgkins, fees as expert	200 00
" April 22,	F. H. Mortimer costs and expenses	100 00
" April 23,	O. M. Tennison, services	40 00
" " 25,	John Dymond, Jr., balance on bill	34 69
" April 29,	E. J. Bellocq, photographic work	70 80
" May 5,	A. C. Gonzales, extracts from assessment roll	25 00
" May 7,	George de Armas, services	25 00
" " 23,	Miss Bessie Mead, for maps	24 50
" July 19,	L. Graham & Co., for mounting maps	9 50
" July 19,	Romanski Photo Engraving Co., for maps	25 00

1904	July 19, Romanski Photo Engraving Co., for halftone Majestic	3 05
"	July 19, F. H. Mortimer, commission mileage and expenses	60 89
"	July 25, Hibernia Bank & Trust Co., money advanced	333 89
"	Aug. 1, L. N. C. Spotorno for articles furnished	36 50
"	Aug. 16, Eugene Dietzan Co.	1 80
"	" 19, L. Nat. Bank, bill of F. C. Zacharie	30 00
"	Aug. 19, J. D. St. Alexandre, notarial work	189 50
"	Aug. 30, F. H. Mortimer, fees and mileage for witnesses	75 00
"	Aug. 30, E. J. Bellocq, for maps	11 80
"	Sept. 6, V. Loisel, U. S. Marshal, serving subpoenas	6 00
"	Sept. 9, E. J. Bellocq, maps	6 60
"	" 9, E. Hooker, fees and mileage as witness	19 50
"	Sept. 9, Stephen Maloche, fee and mileage as witness	9 60
"	Sept. 13, R. H. Carter, serving subpoenas	50 00
"	Sept. 13, R. H. Carter services stenographer	500 00
"	Sept. 14, E. Wentzel, witness	9 60
"	Oct. 1, O. H. Tennison, services	5 00
	E. H. Bellocq, maps	31 80
		$2752 16

I hereby certify the above to be a correct statement of amounts paid out for costs of Court in the suit of the State of Louisiana versus the State of

Mississippi, as shown by the records of my office to October 1, 1904, inclusive.

Martin Behrman

Auditor.

Baton Rouge, Oct. 7, 1904.

EXHIBIT P—2.

STATE OF LOUISIANA,
PARISH OF ORLEANS.

BEFORE ME, ALVIN EDWARD HEBERT, a Notary Public for the Parish of Orleans, this State, duly commissioned and qualified, *Personally Came and Appeared:* MR. REGINALD H. CARTER, official Stenographer for the State of Louisiana, in the suit of the State of Louisiana vs. State of Mississippi, No 11 Original, of the docket of the Supreme Court of the United States, who, being by me first duly sworn, deposes and says, that his bill for stenographic services, rendered the State of Louisiana in said cause, amounts to the sum of Nineteen Hundred and Fifty-Six ($1956.00) Dollars, on which there is a balance due him of Twelve Hundred and Fifty ($1250.00) Dollars.

R. H. Carter

Sworn to and subscribed before me,
this 8th day of October, 1904.

Alvin Edward Hebert
Notary Public.

EXHIBIT P.—3.

STATE OF LOUISIANA,
PARISH OF ORLEANS.

BEFORE ME, ALVIN EDWARD HEBERT, a Notary Public, for the Parish of Orleans, this State, duly commissioned and qualified, *Personally Came and Appeared*: FRANK H. MORTIMER, appointed by the Supreme Court of the United States as Commissioner to take the testimony and evidence on the part of the State of Louisiana in the suit of the State of Louisiana vs. State of Mississippi, No. II. Original of the Docket of the Supreme Court of the United States, who being duly sworn, deposes and says, that there is due him by the State of Louisiana for services rendered in said cause, about Two Hundred and Sixty ($260.00) Dollars.

Frank H. Mortimer

Sworn to and subscribed before me,
this 8th day of October, 1904.

Alvin Edward Hebert
Notary Public.

EXHIBIT P—4.

UNITED STATES OF AMERICA,
STATE OF LOUISIANA,
PARISH OF ORLEANS.

Before me, the undersigned authority, personally came and appeared Walter Guion, Attorney General of the State of Louisiana, who, on being duly sworn, declares that, in addition to the amount already paid by the State of Louisiana, as costs in the suit now pending in the Honorable the Supreme Court of the United States, wherein the State of Louisiana is plaintiff, and the State of Mississippi defendant, as shown by the statement of the Honorable Martin Behrman, Auditor of the State of Louisiana, dated October 7th, 1904, and the amount due Commissioners Mortimer and Bullard, and R. H. Carter, Stenographer, there is a further and additional amount of $309.15 due by the State of Louisiana for copies of maps and coloring of same, and for expenses of special counsel employed by the State of Louisiana in visiting Washington, D. C., for the purpose of making a special motion in behalf of the State of Louisiana, to be permitted to offer in evidence the maps produced by the State of Louisiana in atlas form, which amount of Three Hundred and Nine Dollars and Fifteen Cents ($309.15) is yet to be paid by the State of Louisiana on the approval of declarant.

Walter Guion

Sworn to and subscribed before me
this 8th day of October, 1904.

Alvin Edward Hebert
Notary Public.

EXHIBIT P—5.

STATE OF LOUISIANA,
PARISH OF ORLEANS,
CITY OF NEW ORLEANS.

BEFORE ME, ALVIN EDWARD HEBERT, a Notary Public for the Parish of Orleans, State of Louisiana, duly commissioned and qualified, *Personally Came and Appeared*: MR. WM. M. JUNGBLUT, Auditor of the *Oyster Commission of Louisiana*, who being, by me, first duly sworn, deposes and says:

That the *Oyster Commission of Louisiana* advanced the sum of Four Hundred and Twenty-four and 43-100 ($424.43) Dollars, in Court costs in the boundary suit of the State of Louisiana, Complainant, vs. the State of Mississippi, Respondent, No. 11, Original of the Docket of the Supreme Court of the United States, and that the said sum has not yet been reimbursed to the said *Oyster Commission of Louisiana* by the State of Louisiana.

Wm. M. Jungblut

Sworn to and subscribed before me,
this 8th day of October, 1904.

Alvin Edward Hebert
Notary Public.

EXHIBIT P—6

STATE OF LOUISIANA,
PARISH OF ORLEANS,
CITY OF NEW ORLEANS.

I, FRANK H. MORTIMER, Commissioner by appointment of the Supreme Court of the United States, in the suit of the

STATE OF LOUISIANA, Complainant,

versus

STATE OF MISSISSIPPI, Respondent,

No. 11, Original, of the docket of the Supreme Court of the United States—

Do Hereby Certify, that the record in this cause, as made up of evidence offered by the State of Louisiana, consists, and will consist, of the following, to-wit:

About fourteen hundred and fifty (1450) typewritten pages, legal cap size, of testimony;

Seventy-seven (77) maps of various sorts and sizes;

One hundred and four (104) documents;

Seventeen (17) exhibits;

Five (5) diagrams;

Two (2) samples of earth;

I do further certify that no copy was placed in the record of maps Nos. 21 and 23, the originals obtained from the Congressional Library at Washington, D. C., being exhibited before me and returned to said library to be subsequently produced in original on the trial of this cause, it being testified before me that it was impossible to copy said maps by photographic process, by reason of their age and condition,

and that Map No. 56, although the original was filed with me, could not be copied for the same reason.

Frank H. Mortimer

Commissioner.

BEFORE ME, ALVIN EDWARD HEBERT, a Notary Public for the Parish of Orleans, State of Louisiana, duly commissioned and qualified, *Personally Came and Appeared:* MR. FRANK H. MORTIMER, who, being by me first duly sworn, deposes and says, that the facts stated in the foregoing certificate are true and correct to the best of his knowledge, information and belief.

Frank H. Mortimer

Sworn to and subscribed before me,
this 8th day of October, 1904.

Alvin Edward Hebert

Notary.

EXHIBIT P—7.

STATE OF LOUISIANA,
PARISH OF ORLEANS.

BEFORE ME, ALVIN EDWARD HEBERT, a Notary Public, for the Parish of Orleans, this State, duly commissioned and qualified, *Personally Came and Appeared:* MR. REGINALD H. CARTER, official Stenographer for the State of Louisiana, in the suit of the State of Louisiana vs. State of Mississippi, No. 11, Original of the docket of the Supreme Court of the United States, who being by me first duly sworn, deposes and says, that the testimony on the part of the State of Louisiana in said cause will make, when completely written out, about fourteen hundred and fifty (1450) type written legal cap pages of about three hundred words (300) each.

R. H. Carter

Sworn to and subscribed before me,
this 8th, day of October 1904.

Alvin Edward Hebert
Notary Public.

EXHIBIT P—8.

STATE OF LOUISIANA,
PARISH OF ORLEANS,
CITY OF NEW ORLEANS.

Before me, Alvin Edward Hebert, a Notary Public for the Parish of Orleans, this State, duly commissioned and qualified, personally came and appeared, Walter Guiou, Attorney General of the State of Louisiana, who being by me first duly sworn, deposes and says, that, on Friday, October 7th, 1904, he personally, by direct telephonic communication, notified Hon. William Williams, Attorney General of the State of Mississippi, at Jackson, Mississippi, that the State of Louisiana, would, through counsel, appear in the Supreme Court of the United States, at Washington, D. C., on Monday, October 10th, 1904, and then move the said Court for an order, permitting the State of Louisiana in preparing for submission to said Court, the record in the suit of the State of Louisiana vs. the State of Mississippi, No. II, Original, of the Docket of said Court, to tender her map evidence in a single atlas form, containing all maps offered by the State of Louisiana, except those on file in the library of Congress, Washington, D. C., and which could not be copied by photographic process by reason of their age, said Court being moved to accept and receive said single atlas of maps as a full compliance with the requirements of its rules in such cases and the enormous expense of reproducing further copies of said maps being thereby avoided; and,

Affiant further deposes and says that the State of Mississippi had, from time to time, been furnished

with copies of the maps, documents, and other evidence, offered as evidence, in said cause, as said maps were, from time to time, offered in evidence in said cause, save and except those maps, copies of which were formally waived by the State of Mississippi, as shown by the record, and those certain maps Nos. 21, 23, and 56, which, by reason of their age and discoloration could not be copied by photographic process.

Walter Sauer

Sworn to and subscribed before me
this 8th day of October, 1904.

Abner Edmunds Hatch
Notary Public.

EXHIBIT P—10.

STATE OF LOUISIANA,
PARISH OF ORLEANS,
CITY OF NEW ORLEANS.

BEFORE ME, ALVIN EDWARD HEBERT, a Notary Public for the Parish of Orleans, State of Louisiana, duly commissioned and qualified, *Personally Came and Appeared*: MR. JOHN DYMOND, JR., who, being by me first duly sworn, deposes and says: that he is one of the associate counsel representing the State of Louisiana in the suit of the State of Louisiana vs. State of Mississippi, No. II, Original, of the Docket of the Supreme Court of the United States; That in his said capacity, as associate Counsel, he has had charge of the procuring and preparing of the evidence offered by the State of Louisiana in said cause, and is familiar with the cost of reproducing copies of the maps offered in evidence in said cause, by the State of Louisiana, and that he estimates that it would cost, at the very least, the sum of Seven Thousand ($7000.00) Dollars to reproduce by photographic process twenty-five (25) copies of each of the seventy-seven (77) maps, offered by the State of Louisiana in said cause.

John Dymond Jr.

Sworn to and subscribed before me,
this 8th, day of October 1904.

Alvin Edward Hebert
Notary Public.

EXHIBIT P—9.

OFFICE OF THE CLERK,
SUPREME COURT OF THE UNITED STATES,
Washington, D. C., October 22, 1904.

F. C. ZACHARIE, Esq.,
Washington, D. C.

DEAR SIR: In compliance with your verbal request of today, I beg to say I estimate that the total cost of preparing and printing the record in the case of Louisiana v. Mississippi, No. 11, Original, of October Term, 1904, at about $2,000. This estimate is based on your statement that the record will contain about 1600 typewritten pages of 3 hundred words to a page.

Yours truly,

JAMES H. MCKENNEY,
Clerk Supreme Court U. S.,
Per W. R. S.

FILE COPY.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 11, Original.

STATE OF LOUISIANA, COMPLAINANT,

vs.

STATE OF MISSISSIPPI.

IN EQUITY.

BRIEF ON BEHALF OF THE STATE OF LOUISIANA IN SUPPORT OF HER BILL OF COMPLAINT.

WALTER GUION,
Attorney General of the State of Louisiana.

JOHN DYMOND, JR.,
FRANCIS C. ZACHARIE,
Of Counsel.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 18372

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 11, Original.

STATE OF LOUISIANA, COMPLAINANT,

vs.

STATE OF MISSISSIPPI.

IN EQUITY.

BRIEF ON BEHALF OF THE STATE OF LOUISIANA IN SUPPORT OF HER BILL OF COMPLAINT.

STATEMENT OF PLEADINGS.

Without quoting here at length the pleadings in full, it will be sufficient for the purposes of this argument to state briefly the claims of Louisiana and the counter-claims of Mississippi set forth in the pleadings of the two States.

Louisiana claims the disputed territory by virtue of the act of Congress admitting her into the Union approved April 6, 1812, fixing her boundaries and the amendatory act of Congress approved April 14, 1812, adding territory to her domains, as including within these boundaries the territory here in dispute; Louisiana further claims herein, in

the bill of complaint, that the boundaries of the State of Mississippi under the act of Congress approved December 10, 1817, did not include the territory in dispute; and if they did, that said act would be inoperative and void and would not affect the boundaries laid down in the Louisiana act five years previous to the passage of the Mississippi act; the bill then sets forth that the States of Mississippi and Louisiana have by legislative enactments regulated the oyster industries of the two States, some of the provisions of which laws are in conflict with each other; Louisiana further claims that the true boundary line of southern Mississippi and the northern line of the southeast portion of Louisiana is at the deep-water sailing channel, extending from the mouth of the Pearl river through the upper corner of Lake Borgne, north of Half Moon, or Grand Island, eastward through Mississippi sound to the Cat Island pass, north of Isle à Pitre and southwest of Cat island, in which channel buoys, marking it, have been placed by the United States Coast Survey; that owing to the great differences between the oyster laws of the States of Louisiana and Mississippi, and there being no definitely marked boundary line in this region of the States and the waters thereof, there came about a violent clash and dispute in regard to their rights in the disputed territory between the two States, their officers and citizens, which threatened to result in violence; and, thereupon, that the governor of the State of Louisiana initiated and brought about an agreement and understanding with the governor of Mississippi by which the governor of each State appointed a commission of citizens of each State to endeavor to amicably settle the dispute and agree upon the boundary line; that after a joint meeting of the two commissions and full discussion of the subject-matter, it appeared that there could be no amicable agreement on the subject-matter and the Mississippi commissioners said that—

"*It is apparent that the only hope of a settlement is a friendly suit in the Supreme Court of the United States and we respectfully suggest that course*" (Record, p. 25).

and in accordance with that suggestion and agreement the present suit was brought.

Whereupon The State of Mississippi, respondent, through its counsel, filed a demurrer to the bill of complaint, and asked the dismissal of the suit because the Governor and Attorney General of Louisiana had no authority in law to bring the suit; and further because this honorable court had no jurisdiction in the matter, as it did not constitute a controversy between the States of Louisiana and Mississippi as to their boundary line within the meaning of the Constitution of the United States; and further that, under the boundaries as laid down in the two acts admitting the respective States, the territory in dispute belonged to Mississippi and that there was no conflict between the provisions of said two acts of Congress; and further that the bill showed upon its face that the suit was attempted to be brought by the State of Louisiana in its sovereign corporate capacity, when the said State had no property rights involved, but was simply championing the rights of its private citizens and lending its name for their individual benefit; and further that the State of Mississippi had never, in any manner, denied or controverted the boundary line of the State of Louisiana or through any of its duly authorized officers; and that the action of the so-called commissioners of the State of Mississippi, in regard to the adjusting of the boundary line, was unauthorized by the State of Mississippi or any of its laws; and further that the alleged threats of an armed conflict between the officers of the State of Louisiana and those of the State of Mississippi were merely alleged generally in the bill without setting forth any facts or details.

This demurrer having been overruled, the State of Mississippi filed its answer and cross-bill and denied singularly and articulately almost every material allegation contained in the bill of complaint, and set up in the cross-bill an entirely new and different boundary line from that claimed by the State of Louisiana, basing its claim on its interpretation

of the acts of Congress, creating the two States, to the effect that the islands which Congress gave to Louisiana were other islands outside of and beyond the disputed territory, in the gulf of Mexico, and that Mississippi owned the disputed area, because it was composed of islands which were within six leagues of her shore; and setting forth other new matters which we will not recapitulate here, but will discuss hereafter in the course of the argument in this brief. To this cross-bill of Mississippi, the State of Louisiana filed her replication, and answer to the cross-bill, in which it is set forth and alleged that if the contentions of the State of Mississippi, as set forth in her cross-bill, be true that the act of Congress admitting the State of Mississippi as a State, gave to the State of Mississippi the territory in dispute, then said portion of said act would be unconstitutional and void as taking away from the State of Louisiana without her consent, a portion of her territory previously granted to her by Congress in 1812, and if there be a conflict between the two acts of Congress, the prior grant to Louisiana must prevail over the later grant to Mississippi; that the islands embraced in the grant to the State of Louisiana are not to be defined and delimited from the main land of Louisiana, but are to be defined, determined and delimited from the *Louisiana marshes*, as her *coast* of the State of Louisiana as set forth in the act of Congress creating the State of Louisiana; further that the acts of Congress cited by respondent in the cross-bill cannot in any way affect the prior grant to Louisiana; further that the officers and citizens of the State of Mississippi, as well as the official cartographers, have from almost time immemorial acknowledged and recognized the territory in dispute as belonging to Louisiana and that Louisiana has always uniformly asserted title thereto, and that Mississippi, until quite recently has tacitly assented thereto; and further, if there be any inconsistency or clash between the boundary lines of the States of Louisiana and Mississippi as laid down in their respective acts of admisaion into the Union,

that said conflict was purely unintentional on the part of Congress and arose from a want of geographical and topographical knowledge of the territories, of a remotely distant country from the National Capital, and at the time only recently acquired by the United States; and further that the recent acts of the legislature and courts of the State of Mississippi, in reference to islands within eighteen miles of her shore, referred to those islands belonging to the State of Mississippi outside of the disputed area and about the ownership of which there was no dispute and that such legislative enactments and judicial decisions had no reference or relation to the disputed area of today; and finally that the adoption of the deep-water sailing channel line as the boundary of the States in this region reconciled the acts of Congress, was in accord with the line which the two States have for the past one hundred years recognized by their own acts as the true boundary line, and should be decreed to be such today.

With this statement of the pleadings we will, therefore, in our argument and discussion first consider—

THE DEMURRER OF THE STATE OF MISSISSIPPI TO THE SUFFICIENCY OF THE BILL OF COMPLAINT AS FILED BY THE STATE OF LOUISIANA.

An analysis of the demurrer of the State of Mississippi shows that it subdivides its attack on the sufficiency of Louisiana's bill of complaint into the three following parts:

I. That the governor and attorney general of Louisiana were not authorized to file the bill on behalf of the State of Louisiana.

II. That there was no danger of an armed conflict between the States; that there was no dispute; that Louisiana was acting for her citizens and their private interests and not for herself as a sovereign State; and that there was not a con-

troversy between the two States within the intendment of the provisions of the Constitution of the United States on the subject.

III. That the State of Louisiana had no direct financial proprietary interest that would be affected by a decision of the issues.

We take it that your honors in overruling the demurrer of the State of Mississippi did so on the theory that the bill of complaint, on its face, stated a cause of action giving this honorable court jurisdiction and that your honors would expect the State of Louisiana, on the trial of the case, to show the existence of the state of facts which she claims establish her cause of action (Kansas *vs.* Colorado, 185 U. S., 125).

This leads us to a consideration of the facts established by the record for the purpose of ascertaining if there be really a controversy between the States of Louisiana and Mississippi in their sovereign capacities, such as would justify your honors in asserting your right to jurisdiction as prayed for by the State of Louisiana and such as would come within the provisions of the Constitution of the United States, where there is alleged to exist a *controversy between two States*. It will be necessary to further ascertain if the record shows, as a result of the acts of Congress respectively creating the States of Louisiana and Mississippi, such confusion and conflict as to boundaries as would give rise to a legitimate subject of dispute as to their respective boundaries today, and lastly whether the record shows a direct financial and proprietary interest in either the State of Louisiana or the State of Mississippi which would be affected by the existing contentions and by a decision of the issues involved herein.

We respectfully submit that the record affirmatively shows the existence of all of these facts and conditions essential to constituting a cause of action within the intendment of the

article of the United States Constitution just referred to, as we will now proceed to show by recounting historically the facts that led up to the institution of this suit by the State of Louisiana and as these propositions are all closely interrelated, cognate and bearing one upon the other, we shall consider and discuss them collectively under one heading in our consideration of the demurrer, setting them forth in chronological order.

In the year 1886, the State of Louisiana, by act No. 106 of the legislature of that year, page 195, first undertook to adopt a comprehensive system of control of her State oyster-producing waters and of her oyster industry. This law placed the power to control the industry in the hands of the officials of the political subdivisions of the State of Louisiana, corresponding to the counties of other States, but which are in Louisiana called *parishes*. By its provisions, these parochial authorities were vested with the power to control the oyster waters and regulate the industry in their several localities; but along general lines laid down in the State law. As the oyster industry grew in importance, through its own natural development, this original oyster law was followed by additional oyster legislation to be found in the acts of the Louisiana legislature Nos. 110 of 1892, page 142, and 121 of 1896, page 170, until the year 1900 when the legislature of Louisiana, appreciating the growth of the State's oyster industry and the value of the State's ownership of her oyster water bottoms and beds, adopted act No. 159 of the session of that year providing for the creation of a legislative commission to investigate and study the oyster industry of the State. It will be observed by referring to the Louisiana oyster law, act 121 of 1896, page 175, section 9, 3rd paragraph, that the *dredging* of oysters was prohibited in Louisiana waters. The dredging of oysters is a process by which the water bottoms are scraped for the purpose of gathering the oysters therefrom. Mechanical appliances, called *dredges* are employed and are operated on

vessels, some of which vessels are propelled by steam and others by sail power. Adopting a policy absolutely different from that of Louisiana, the State of Mississippi (chapter 129 of the Laws of Mississippi of 1896 and chapter 90 of the Laws of 1898,) permitted the use of these dredging appliances in the oyster fishing of her waters, thus leading to a radical difference in the treatment by the two States of their oyster industries in their respective waters; and furnishing an opportunity for a consequent conflict in the system of operation in the event of any uncertainty or dispute as to the boundaries of the two States.

It will also be noted that under the provisions of this Louisiana law, page 171, section 4, non-resident oyster fishermen were prohibited from fishing oysters in Louisiana waters In this action of her legislature, in reserving for the exclusive benefit of her own citizens the privilege of fishing oysters in her waters, Louisiana was but following the example previously set by some of her sister oyster States on the Atlantic coast, and was exercising a right which has been universally recognized as being properly hers: (McCready *vs.* Virginia, 94 U. S., 391, affirming 27 Grat. (Va.), 985 (and in effect overruling *Ex parte* McCready, 1 Hughes (U. S.), 503); Alvey, C. J., in Hess *vs.* Moir, 65 Md., 586; Haney *vs.* Compton, 36 N. J. L., 507; People *vs.* Lowndes, 130 N. Y., 455; State *vs.* Medbury, 3 R. I., 138; Chambers *vs.* Church, 14 R. I., 398; 51 Am. Rep., 410. See also New England Oyster Co. *vs.* McGarvey, 12 R. I., 385; Eng. & Am. Encyc. of Law, vol. 13, 2d ed., p. 575, and note 3.)

Returning, however, to the more concrete facts in the record in the matter of the controversy we find that in the locality where the disputed boundary exists, is situated the parish of St. Bernard, a political, governmental subdivision of the State of Louisiana. The parochial authorities of the parish of St. Bernard, as shown by the official records hereinafter referred to, in January, 1898, in enforcing the provisions of the then Louisiana oyster law, act 121 of 1896, equipped

and sent out an official expedition to exclude from the oyster waters of the parish of St. Bernard, and which were necessarily, therefore, oyster waters of the State of Louisiana, any non-resident oyster fishermen who might be found fishing oysters in those waters (documents Nos. 1 and 2, Record, pp. 989 and 990).

The sheriff of St. Bernard, the chief executive law officer (Record, pp. 144 *et seq.*) and the president of the police jury of the parish of St. Bernard, the presiding officer of the parochial legislative body, (Record, pp. 172 *et seq.*) and who was at the time the lieutenant governor of the State of Louisiana, both testify as to the personnel of, and the instructions given to this expedition, while Alcide Guiterrez (Record, pp. 152 *et seq.*) and Raymond Roberto (Record, pp. 158 *et seq.*) who were members of the expeditionary party, both testify as to the results of the expedition; that non-resident Mississippi oystermen were found fishing oysters in Louisiana waters, and that they were, in accordance with the provisions of the Louisiana oyster law, notified that they must stop fishing and move out of the Louisiana waters. These Mississippians then complained to the Mississippi authorities of their ejection from Louisiana waters by the Louisiana officers, and this, in due course, led to a conference in New Orleans, Louisiana, between Mr. Albert Estopinal, Jr., the district attorney, or prosecuting law officer of the parish of St. Bernard, and a Judge J. H. Neville, who undoubtedly had been, and was understood by Louisiana to then still be, the district attorney, or chief prosecuting law officer, of Hancock county, State of Mississippi (Record, pp. 162 *et seq.*). It is true that the Mississippi evidence may now show that Judge Neville had just resigned the office of district attorney of Hancock county, State of Mississippi, or that his term had just expired, and that he was, in the interview hereafter referred to, acting in his private capacity as an attorney-at-law; but the record will also show that Louisiana did not so understand it. On this subject, Mr.

Albert Estopinal, Jr., district attorney of the parish of St. Bernard, State of Louisiana (Record, p. 163), testified as follows, in reference to his conference with Judge Neville of Mississippi, to wit:

Q. "Who was Judge Neville, will you please state?"
A. "He was at that time, the district attorney, if they call him such, over in Hancock county, I believe, State of Mississippi."
Q. "Did he so represent himself to you?"
A. "Yes, sir; it was in his capacity as prosecuting or district attorney over there that he consulted with me in regard to this matter."

In discussing the subject of probable results in the event that the authorities of the parish of St. Bernard persisted in their then intention of excluding Mississippi and other non-resident oyster fishermen from Louisiana waters, Mr. Estopinal further testifies, in relation to his conference with Judge Neville of Mississippi, as follows:

Q. "Did he in any way give any expression as to what the attitude of the Mississippi authorities would be in the event that Louisiana, or the parish of St. Bernard, persisted in her intention."
A. "Yes, sir; he, as district attorney, was quite determined to oppose the contention of the Louisiana people."

* * * * * * *

Q. "Did he, in any way, indicate the extent to which this resistance would be carried."
A. "My recollection is, that he stated there would be an armed conflict. That there would be blood shed. The fact is that the judge, that the district attorney, Mr. Neville appeared to be very anxious and very zealous to do something for the Mississippi people, and as I said a moment ago, he went on to state that the Mississippi authorities would contest any such right of the State of Louisiana as contended by Louisiana, represented in this particular instance by the parish of St. Bernard."

It is well to state at this point that before the adoption and enforcement of the act of the Louisiana legislature excluding non-resident oyster fishermen from Louisiana waters, Mississippi oyster fishermen had been accustomed to fish oysters all through the Louisiana waters, east of the Mississippi river, even down through the parish of Plaquemines, which latter parish is not in any way included in Mississippi's present claim, and that Louisiana was not excluding non-residents from any particular disputed area, but was enforcing a law applying to all her waters. This is shown by the testimony of the Mississippi witnesses taken in connection with Mississippi's present contention. The map, Mississippi "A" (Record, p. 88), shows Drum bay, Live Oak bay, California bay, Scow pass, Martin island, Mitchell islands, and Julius pass, all to the south of the red-ink line thereon, and therefore beyond the Mississippi claim. Yet Mr. B. R. Clements, a Mississippi witness (Record, p. 1216), testified as follows:

Q. "Did you ever fish as far south as Drum bay?"
A. "Yes, sir."
Q. "Did you ever fish as far south as Live Oak bay?"
A. "Yes, sir; no, I did not know it by that name then."
Q. "Did you consider Drum bay and California bay in Mississippi or Louisiana?"
A. "Well, we could not say, Judge. We considered the whole business, there, in Mississippi at that time, because we were never restrained from catching anything and nobody told us anything about it."

The testimony of this, Mississippi's first witness, is typical of all of her other witnesses on this point. They considered that it was wrong for Louisiana, as a State, to restrict to her own citizens the benefit and privilege of her oyster fisheries, and resisted this exercise by Louisiana of her legal right, and did not then raise a complaint as to boundary. The question of boundary arose only as an after conclusion, when it became necessary to, in some way, meet Louisiana's aggressive attitude.

Reference is made to the conference of the district attorney of the parish of St. Bernard and the presumed district attorney from the State of Mississippi for the purpose of showing the official character that the dispute was taking on, and the sort of conflict that was likely to follow aggressive action by the two States. Nothing definite, however, appears to have come from the conferences of these officials of the two States *except a suggestion of litigation to settle the question* until January 19, 1901, when at the instance of the Louisiana legislative commission already referred to as appointed under the provisions of act 159 of 1900 to study the Louisiana oyster industry, and at the instance of committees appointed from the police juries of the Louisiana parishes of St. Bernard and Plaquemines whose oyster waters were being invaded by Mississippi oyster fishermen (Record, p. 990, document No. 3, and Record, p. 1091, document No. 61), a meeting of the State officials of Louisiana was held in New Orleans, Louisiana, to consider the subject of the dispute with the State of Mississippi, and the invasion by nonresidents of the Louisiana oyster waters (Record, p. 20, Exhibit "A"). The meeting was largely attended, was presided over by his excellency, William W. Heard, then governor of the State of Louisiana, and with its occurence, the subject of the trouble ceased to be a matter of parochial concern, and from the Louisiana point of view at once became a State matter. The result of the meeting was that the governor of the State of Louisiana appointed a commission of five (5) members and by an official communication addressed to the governor of the State of Mississippi, requested that official, on behalf of his State, and in order to have the matter considered by the State of Mississippi as a State, to appoint a similar commission, which two commissions might confer and see if it were possible to affect an amicable settlement of the dispute between the two States (Record, p. 22, Exhibit "B").

On February 9, 1901, his excellency, A. H. Longino,

then governor of the State of Mississippi, appointed a similar commission on behalf of his State, and officially advised the governor of Louisiana to that effect (Record, p. 23, Exhibit "C").

These two commissions held a joint conference in New Orleans, Louisiana, March 26, 1901, and thoroughly discussed the subject of dispute. Even then Mississippi's present definite contention had not as yet been disclosed, as will be seen by a reference to the minutes of the meeting (Record, p. 24, Exhibit "D"); but Louisiana's position was clearly defined, and a map showing Louisiana's contention as to the deep-water channel boundary in the disputed area was presented to the Mississippi commission. This map is known as Exhibit "E," and is bound with the Louisiana Atlas of Maps, page 60. The Mississippi Amicable Boundary Commission after some delay and a study of the subject made a reply to the Louisiana commission July 20, 1901, stating that it was in its opinion impossible to effect an amicable extrajudicial settlement of the dispute (Record, p. 25, Exhibit "F"), and concluding its report with the following important sentence, to wit:

"*It is apparent that the only hope of settlement is a friendly suit in the Supreme Court of the United States and we respectfully suggest that course.*" (Italics ours.)

A report to the same effect was likewise submitted by the Mississippi commission to his excellency, A. H. Longino, governor of Mississippi, on October 2, 1901, (Record, p. 2021, Mississippi document No. 78) to whom was also submitted a minority report by two members of the same commission, (Record, p. 2028, Mississippi document No. 79). His Excellency, A. H. Longino, governor of Mississippi, in turn, in January, 1902, in his annual message, submitted to the legislature of the State of Mississippi, then in session, a report concerning his actions in endeavoring to effect an amicable settlement of the dispute with the State of Louisiana

(Record, p. 993, document No. 6, and Record, p. 2031, Mississippi document No. 80) and referred to the suggested and contemplated friendly suit in this honorable court, thus acquainting the Mississippi legislature with that fact. Anticipating that the matter would be settled in this way, and no doubt considering that it would be ample time to make provisions for the defense of the suit after it had been instituted, the legislature of the State of Mississippi took no action at that time on the report of its governor. On the other hand, the State of Mississippi, at this session of its legislature, did adopt a new law controlling her oyster waters and oyster industry, (chapter No. 58 of the Laws of Mississippi of 1902), which indirectly tended to bring this matter to a crisis. This law created a State oyster commission, vested with the entire control of the Mississippi oyster territory and industry. The creation of this commission took the control of Mississippi oyster industry entirely out of the hands of the several coast county authorities, where it had been previously lodged, and centralized it in this State body, a department of the State government of the State of Mississippi, which was, by the terms of the law creating it, authorized to establish a system of patrol of the Mississippi oyster waters, and to maintain patrol boats to enforce the Mississippi oyster law in her territory.

In July, 1902, the State of Louisiana followed the example of the State of Mississippi, and adopted act No. 153 of 1902, page 274, creating the Oyster Commission of Louisiana, which was also created a department of the State government of the State of Louisiana; vested with the full control of the oyster industry of Louisiana, authorized to establish patrol boats, and maintain an armed patrol of Louisiana oyster waters, to protect Louisiana's rights and enforce her oyster laws in her waters.

This legislation of the two States, as just stated, brought the subject of the boundary dispute between the two States to a crisis, as both commissions had the legal authority and

financial ability, as well as the armed vessels and men to enforce their construction and interpretation of their respective rights and ideas as to boundaries, and had there been no danger of an armed conflict before, one was now likely to occur, unless some arrangement was made as to boundaries whereby a *modus vivendi* should be established until the dispute between the States as to their boundary could be judicially determined. The oyster commissions of both States appreciated these facts. Mr. James M. Breaux, president of the oyster commission of Louisiana (Record, pp. 805 *et seq.*) testified on this subject as follows:

Q. "Do you know what the provisions, and did you know at the time, what the provisions of the Louisiana law were in regard to the jurisdiction and control of the Oyster Commission of Louisiana over the oyster waters of the State of Louisiana?"

A. "Yes, sir."

Q. "Did you, at the time, consider that the territory which we commonly call now, the neutral territory, was part of the State of Louisiana?"

A. "Yes, sir."

Q. "Would you or would you not have considered it necessary, in the absence of an amicable agreement between the two States, to have enforced the Louisiana law in what is now called the neutral territory?"

A. "Beyond a doubt."

Q. "Were you authorized by the Louisiana law, as the Oyster Commission of Louisiana, to maintain an armed patrol boat in patrolling the waters of the State of Louisiana and enforcing the Louisiana law?"

A. "We were."

Q. "Did you maintain such a patrol boat in that territory?"

A. "We did."

Q. "In the event there had been resistance on the part of the authorities of the State of Mississippi or the people of the State of Mississippi to the enforcement of the Louisiana law in that territory, would you or would you not, at that time, have felt compelled to have recourse to your armed patrol boat to enforce Louisiana's rights in that territory?"

A. "Certainly, I would."

* * * * * * *

Q. "Mr. Breaux, you, of course, know there was an agreement which happily avoided any crisis. Suppose there had been no such agreement at that time, what would you have done as president of the Oyster Commission of Louisiana in regard to this disputed territory?"

A. "I would have protected the oyster territory of Louisiana in any way—well, with armed force, as we had equipped our patrol boat for that purpose."

Q. "Was this boat actually armed?"

A. "It was, yes, sir."

Q. "At the time, and just immediately prior to this conference which occurred in September, 1902, was there any danger of a conflict, and if so, on what do you base your idea?"

A. "Was there any danger of a conflict before the understanding between the two commissions?"

Q. "Yes, sir."

A. "Well, we thought there would be probable danger of a conflict, yes, sir; in other words, we were satisfied there would be, unless there would be an agreement made between the two commissions, and as president of the Oyster Commission of Louisiana, I was determined to protect the Louisiana territory."

We make this extract from Mr. Breaux's testimony for the purpose of showing the critical condition that affairs had assumed before Louisiana filed her bill of complaint and instituted this suit. In anticipation of this conflict, and to avoid it, the Oyster Commissions of Louisiana and Mississippi met in joint conference in the city of New Orleans, Louisiana, on September 9, 1902, and after a full discussion of the conditions existing adopted the following joint resolution.

"On motion of Commissioner F. J. Ladner of Mississippi, seconded by Commissioner N. H. Nunez of Louisiana, the following resolution was adopted:

"*Be it resolved by the Oyster Commissions of the States of Louisiana and Mississippi, in joint conference*, That all the water territory embraced within the following limits, to wit:

"Beginning at a point in the center of the mouth of Pearl river, thence in a southeasterly direction to Malheureux point, thence in an easterly and northeasterly direction fol-

lowing the shore lines to Grand pass, thence along the west shore line of Grand pass, thence easterly to the southernmost point of Sun Down island, thence in a northeasterly direction to the center of the deep-water channel, called Cat Island pass, and thence following the deep-water channel, westwardly, passing between Grassy island and St. Joseph lighthouse, to the point of beginning, *shall, pending the final decision by the Supreme Court of the United States in the boundary suit to be instituted,* remain a common fishing ground to be fished by boats of either State in accordance with, and upon compliance with, the laws of either State, and inspectors and officers of the respective commissions (oyster) will govern themselves accordingly" (Record, p. 991, document No. 4). (Italics ours.)

The adoption of this agreement established a neutral territory between the two States, pending the judicial determination of the boundary dispute, and permitted the two commissions to operate without danger of a conflict, provided the issues were speedily settled by suit. The neutral territory did not include all of the disputed territory. Louisiana would not consent to this. By it complete temporary jurisdiction was given, however, to Mississippi over all the waters of Mississippi sound, north of the deep-water channel, which waters Louisiana concedes belong to Mississippi. The waters of Mississippi sound between the deep-water channel and the north shore line of the Louisiana marshes were neutral; and all waters of the Louisiana marshes south of the Louisiana shore line were given into the exclusive jurisdiction of Louisiana, as Louisiana would not even temporarily recognize the right of Mississippi therein.

As appears from the agreement, this was but a *modus vivendi,* pending the judicial determination of the disputed boundary, and was adopted by the official authorities of the two States to prevent the serious conflict which would have inevitably followed in the absence of any such provision, and the resulting conflict of authority.

Louisiana then, on October 20, 1902, filed her motion in

this honorable court, asking permission to file her bill of complaint against the State of Mississippi, and the bill of complaint was ordered filed (Record, p. 3).

To show that Mississippi also regarded the issues as *State* issues from her point of view, it is to be noted that even after the institution of this suit by Louisiana, the governor of Mississippi endeavored to secure an amendment of the *modus vivendi* agreement of September 9, 1902 (Record, p. 992, document No. 5), which agreement had been made by the Oyster Commission of Mississippi one of the departments of government of the State of Mississippi.

As we have previously stated the legislature of the State of Mississippi had by the governor's message (Record, p. 2031, Mississippi document No. 80) been advised that a friendly suit would be instituted by the State of Louisiana to settle the disputed boundary, and that by the governor's second message (Record, p. 2032, Mississippi document No. 81) the legislature of the State of Mississippi was advised of the actual institution of the suit by the State of Louisiana and was informed that the State of Mississippi, officially, claimed ownership of the disputed territory and that, owing to the great importance of the suit to the State of Mississippi, special counsel should be employed for its defense. The legislature of the State of Mississippi then took official cognizance of the subject-matter of the boundary suit instituted by the State of Louisiana and through legislative committees made a report (Record, p. 2108, Mississippi document No. 86) and we today find the interests of the State of Mississippi represented here not only officially by her attorney general and by the ablest special counsel which she, as a State, could find within her own borders, but also assisted by one of the present-day great authorities on international law.

On this subject, therefore, of the official character of this controversy between the two States, in recapitulation, we find that the controversy in an official way began when the officials of the parish of St. Bernard, State of Louisiana, ex-

cluded the Mississippi oyster fishermen from Louisiana waters. This was followed by the conference between Mr. Estopinal, a district attorney of Louisiana, and Mr. Neville, who was supposed, as district attorney, to officially represent the State of Mississippi. Then came the correspondence between the governors of the two States in their official capacities, followed by the appointment and conference of their two commissions and the suggestion of the Mississippi commission. Then followed the conference and agreement of the oyster commissions of the two States, all recognizing the absolute necessity of a judicial determination of the issues in dispute; and finally the legislatures of the two States, at all times fully advised of the progress of the negotiations and proceedings, on the one part ratified what had been done and on the other part took the necessary steps to secure a defense of the suit that had been instituted against her. This certainly constitutes an admission of the existence of a boundary controversy between the two States in their sovereign capacity.

Let us now for a moment consider the authority by which the State of Louisiana, in her sovereign capacity, acted in the institution of this suit.

The State of Louisiana, in presenting her bill of complaint to your honors, acted by instructions and authority of his excellency, William W. Heard, governor of Louisiana, and made her appearance through him, and through her attorney general, Judge Walter Guion, the latter appearing in accordance with the provisions of act No. 65 of the Louisiana legislature of 1884, which in part provides as follows:

"*Be it enacted by the General Assembly of the State of Louisiana*, That the attorney general be, and he is hereby authorized and empowered to institute and prosecute any and all suits he may deem necessary for the protection of the interests and rights of the State" * * * (Record, p. 1176.)

To place the question of authority of the governor and attorney general of the State of Louisiana in instituting

this suit beyond any question of dispute, and to show that the State of Louisiana stood ready to abide by the consequences of your honors' eventual decision in this case, the legislature of Louisiana adopted act No. 26 of its session of 1904, reading as follows:

"*Be it resolved by the senate of the State of Louisiana, the house of representatives concurring*, That the action of his excellency, William W. Heard, governor, in instituting in the Supreme Court of the United States, on the part of the State of Louisiana, a suit against the State of Mississippi to determine the water boundary between the two States be approved, ratified and confirmed" (Record, p. 1173, document No. 99).

There is thus shown by the record the existence of abundant authority of a positive character warranting the institution of this suit by these officials, and all of this is independent of the authority that naturally exists in a Governor of any of our States to take, in a comparative emergency, such action as would best protect the interests of his State.

The fact that the act of Congress creating the State of Louisiana gave that State all islands within there leagues, or nine miles, of her *coast*, and that the act of Congress creating the State of Mississippi gave that State all islands within six leagues, or eighteen miles, of her *shore*, and that some islands within nine miles of the Louisiana *coast* were also within eighteen miles of the Mississippi *shore*, gave a basis from which the boundary controversy between the two States could legitimately and logically arise.

We submit that the foregoing recapitulation of facts unquestionably shows a controversy between the two States as such, and such as comes fully within the constitutional provision.

But not alone were questions of ownership, sovereignty, and legal jurisdiction, as general propositions, at issue in this boundary controversy between these two States. Financial values of great magnitude were also involved in the

question of ownership of the disputed territory. This is shown in many ways by the record. The legislature of the State of Mississippi itself, in January, 1904, received a report, through a committee appointed for that purpose, showing the area of the disputed territory to exceed three hundred (300) square miles, and that the lowest estimate placed upon its value was two millions of dollars ($2,000,000) (Record, p. 2108, Mississippi document No. 86). This estimate of value is confirmed by the testimony of Mr. W. K. M. Dukate, a large Mississippi oyster packer, who testified that he and his associates would be willing to pay the State a rental of two hundred thousand dollars ($200,000.) per annum for the exclusive privilege of fishing oysters in the disputed territory, provided he and his associates were protected in their rights by the State owning the territory (Record, p. 372).

The ownership of all the land that had not been previously sold by the State and the ownership of all of the water area in the disputed territory, being the bottoms of navigable waters of the State of Louisiana, was vested in and claimed by the State of Louisiana in her sovereign capacity and no individuals had any private rights therein. This water area had a positive value of great magnitude. The State of Louisiana, under her oyster law was vested with the ownership of these oyster water bottoms, and authorized to rent them for the purposes of oyster cultivation for which she received a direct rental through her oyster commission of one dollar ($1) per acre per annum and a further revenue of two cents (2c.) per barrel from each barrel of oysters gathered, either from these leased bedding grounds, or from the natural oyster reefs, which were also her property in absolute ownership.

Sections 9 and 10 of act 153 of 1902, pp. 281 and 282.

The value of the direct, positive, financial interest which the State of Louisiana, in her sovereign capacity had and

has in this case will therefore extend into the millio
dollars. Capitalizing at 4 per cent. (4 %) Mr. Duk
annual rental offer of two hundred thousand do
($200,000) would place a value of five millions of do
($5,000,000) on these water bottoms, not considering or
cluding the value of the thousands of acres of sea ma
land above water, included in the disputed territory.

We therefore submit that from the above statement
facts made up from the record, it appears beyond ques
of doubt that the governor and attorney general of the S
of Louisiana were authorized to bring this suit and file a
of complaint on behalf of the State of Louisiana seek
relief at the hands of your honors against the State
Mississippi.

That there exists between the States of Louisiana a
Mississippi, in their sovereign capacity as States, a dispu
or controversy affecting the boundary line separating the
in the locality in contention of a character to justify th
suit.

That the two States, in their sovereign capacities, ha
large financial interests at stake in this litigation.

That serious results would flow from the conflict of la
and official authority, were not the dispute judicially dete
mined by the tribunal having jurisdiction of such causes
action; and that a condition of affairs has been shown t
exist that warrants the appeal to and intervention of th
Supreme Court of the United States.

That this is true is shown by the fact that after you
honors had overruled Mississippi's demurrer denying th
existence of a boundary dispute between the two States i
their sovereign capacities, she filed her answer and cross-bil
(Record, p. 74), in which pleading she officially denie
Louisiana's ownership of the disputed area, made specific
and positive claim that the area belonged to her, and se
forth and urged the adoption of a boundary line different
from that claimed by Louisiana; thus, when forced to it,

finally confessing in her sovereign capacity a judicial admission of the existence of a serious controversy between the two States, and confirming the correctness of your honors' original ruling that a cause of action did exist, justifying your taking jurisdiction of this case.

That the facts, proven by the record, justify a dismissal and overruling of respondent's demurrer, is amply sustained by our jurisprudence.

The last clause of section 2, article III of the Constitution of the United States grants jurisdiction to this honorable court—"*to controversies between two or more States*, between a State and citizens of another State" etc. (Italics are our own.) It therefore becomes necessary in order to establish the jurisdiction of this honorable court, to inquire if the allegations made in the bill of complaint, are borne out by the evidence in the record, as showing a "controversy between two or more States" in the language of the Constitution. And in order to determine that issue it must first be determined what a "controversy between two or more States" is in its constitutional sense. Webster's International Dictionary, in common with the other lexicons defines the word "controversy" to be a contention; dispute; debate; discussion; agitation of contrary opinions;" in a secondary sense "quarrel; strife; cause of variance; difference;" and in a still further sense "a suit in law or equity; a question of right" which last he designates as obsolete. It was contended by counsel for respondent herein, (the State of Mississippi) both in their demurrer and by an attempt to prove by evidence at some length in the record that the allegations of complainant's bill were not true and correct and that this case now at issue before this honorable court was not a controversy between the two States, in their sovereign capacities, in a constitutional sense, but was simply a contention and controversy between individual citizens of the two States, and that Louisiana, the complainant was lending her

aid as a sovereign, by instituting this suit, to her citizens, merely to vindicate their individual rights in the premises.

The article in the present Constitution of the United States, was preceded by an article in the prior "Articles of Confederation" which provided under article X, that power should be granted to Congress to erect a tribunal to have jurisdiction over "all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other cause whatever." The change from the former tribunal under the Articles of Confederation, to the Supreme Court of the United States, and the reasons therefor are fully set forth in No. LXXX of the Federalist. In the case of Rhode Island *vs.* Massachusetts, 12 Peters, p. 719, this honorable court, in a case of boundary between the two States, rules that the jurisdiction granted to it was as broad as that given to Congress under the former Articles of Confederation. In that cause, as in this, the respondent and defendant moved, on the part of the State of Massachusetts "to dismiss the bill on the ground, that the court had no jurisdiction of the cause" (p. 670). In the opinion of the court, delivered by Mr. Associate Justice Baldwin, the question of jurisdiction on boundary suits between States is fully reviewed, and the jurisdiction maintained. On page 721, reference is made to the judiciary act of 1789 organizing the Supreme Court, in execution of the Constitution, and the decision is to the effect that any question or issue as to boundaries between two or more States of the Union, falls within the original jurisdiction of this honorable court. Although Taney, Ch. J., dissented from the decision of the court on other grounds he was careful to say on page 752 "I do not doubt the power of this court to hear and determine a controversy between States, or between individuals, in relation to boundaries of the States, where the suit is brought to try a right of property in the soil or any other right which is properly the subject of judicial cognizance and decision, and which depends upon the true boundary line," but based

his dissent on the ground that Rhode Island, the complainant, did not claim property in the soil in the disputed territory, but only sovereignty and jurisdiction over it. In cases other than those of boundaries this honorable court has taken jurisdiction of cases wherein the pecuniary interests of States have been involved as in State of Pennsylvania *vs.* The Wheeling Bridge Co., 13 Howard, 589; S. C. *vs.* Georgia, 93 U. S., 381. In the latter cause this court said:

"It is argued that this court can take cognizance of no question which concerns alone the rights of a State in her political or sovereign character; that to sustain the suit she must have some proprietary interest which is affected by the defendant. This question has been raised and discussed in almost every case brought before us by a State, in virtue of the original jurisdiction of this court. We do not find it necessary to make any decision on this point as applicable in the case before us."

However, in other decisions this honorable court has declared that in order to vest original jurisdiction a State must have proprietary interest as claimed by Taney, C. J., and Daniel, associate justice, in their dissenting opinions in 13 Howard, and so did the majority of this honorable court in 127 U. S., 287 *et seq.*, and also Louisiana *vs.* Texas, 176 U. S., p. 1. On page 22, 176 U. S., one of the grounds on which the demurrer of the respondent, The State of Texas, was maintained and the bill dismissed was "In our judgment this bill does not set up the facts which show that the State of Texas has so authorized or confirmed the alleged action of her health officer as to make it her own or from which it necessarily follows that the two States are in controversy within the meaning of the Constitution. Finally we are unable to hold that the bill may be maintained as presenting a case of controversy between "a State and citizens of another State."

In the case of The State of Pennsylvania *vs.* The Wheeling Bridge Co. *et al.*, 13 Howard, 519, the State of Pennsylvania

sought an injunction to remove the obstruction in the shape of the bridge, which interfered with the navigation of the Ohio river and interfered with the revenues of the State derived from valuable public works, canals and railways, constructed at great expense as channels of commerce for the transportation of passengers and goods from which a large revenue, as tolls, was received by the State. The respondents set up in their answer "that the State of Pennsylvania had no corporate capacity to institute the suit in the supreme court to vindicate the rights of her citizens; that the State is only a nominal party, whose name was, without proper authority, used by individuals" (p. 558). The question of jurisdiction was fully argued and this honorable court decided (p. 578) "that the State of Pennsylvania has been and will be injured in her public works, in such manner as not only to authorize the bringing of this suit, but to entitle her to the relief prayed for," just as in the present suit Louisiana's pecuniary, financial, and proprietary interests are involved.

In Alabama *vs.* Georgia, 23 Howard, 505, no question of jurisdiction was raised in a suit turning on the interpretation of certain words defining a boundary line, as in the present case.

In Missouri *vs.* Iowa, 7 Howard, 660, there was no question raised as to the jurisdiction of this honorable court in a controversy over boundaries between the two States, but the issue was over the interpretation of the limits defined in the acts of Congress admitting the States, both States claiming full possession, ownership, and enjoyment of the disputed area, as in the suit at bar.

In Florida *vs.* Georgia, 17 Howard, 478, the question was one of boundary between the two States, but the decision goes no further than to discuss the proper process, pleading and procedure in such cases.

In Virginia *vs.* West Virginia, 11 Wallace, 29, a question of boundary was raised, and a demurrer and motion to dis-

miss was filed on the ground that this honorable court had no jurisdiction inasmuch as the issue raised was political and the demurrer was sustained on this and other incidental grounds, among which was that Virginia had by formal act consented to the fixing of that boundary. The demurrer was sustained and the suit dismissed.

This case does not apply in any way to our case.

In New Jersey *vs.* New York, 5 Peters, 284, a controversy arose over the boundary between the two States, and questions were raised and decided more as to jurisdiction and the proper process thereunder; on both of which branches the suit and jurisdiction were maintained.

In the case of Missouri *vs.* Illinois and the Sanitary District of Chicago, 180 U. S., 208, to a bill in equity brought by Missouri seeking an injunction enjoining and prohibiting the emptying of sewerage etc. into a canal entering the Mississippi river, "to the detriment and irreparable and continuing damage and injury to the lives and health of the citizens and inhabitants of the State of Missouri," respondents and defendants demurred to the jurisdiction of this honorable court at length, and in substance that the cause of action was not one between the States in their corporate capacities, and did not constitute such a controversy between the States as contemplated by the Constitution of the United States, and that no property rights were involved therein (pp. 216, *et seq.*). Your honors overruled the demurrer in a lengthy, exhaustive, and able opinion reviewing the whole subject and citing and quoting from all prior adjudications relating thereto, and decided that the bill disclosed sufficient cause to show the interest of the two States. It is true that Mr. Chief Justice Fuller, with whom concurred Messrs. Associate Justices Harlan and White, dissented, but solely on the ground that it was not alleged or claimed that the State of Illinois through its proper officers had taken any action in the premises, the dissenting opinion saying:

"Controversies between the States of this Union are made justiceable by the Constitution, because other modes of determining them were surrendered; and before that jurisdiction which is intended to supply the place of the means usually resorted to by independent sovereignties to terminate their differences, can be invoked it must appear that the States are in direct antagonism as States. Clearly this bill makes out no such state of case."

In the present case we have shown that Mississippi's officers have acted officially.

In Kansas *vs.* Colorado, 185 U. S., 125, in a cause between two States, in regard to the use of the waters of a river, a demurrer was filed to the jurisdiction of the supreme court on the ground that the State of Kansas as a corporate sovereignty had no proprietary interest in the cause of action, but was only lending its name to advance the private interests of certain private corporations and individuals, and that there was, therefore, no such controversy between the States as the Constitution contemplated. This honorable court after reviewing fully all the precedent decisions on this question of jurisdiction, overruled the demurrer, or rather in effect referred it to the merits, as to the proof of the allegations, stating that in an important cause between two sovereign States it would not stand on mere technicalities.

It will be thus seen that from the synopsis of the evidence which we have already presented, together with the citations and quotations from the decisions and opinions of this honorable court that the allegations contained in the bill of complaint have been fully sustained and show a cause of action vesting jurisdiction in this honorable court in this cause. First: as being a suit between States in their corporate capacity in regard to boundary and involving proprietary interest. Second: that the officers of the State of Louisiana brought this suit under full authority from the State and that it is not a controversy between individual citizens of the State,

but that Mississippi's officers had acted in their official capacities. Third: that there was imminent danger of a violent clash over the boundary line between the officers and citizens of the two States. But even this, although we believe it was abundantly shown, was not in our opinion necessary to give this honorable court jurisdiction, as we nowhere find in any of the boundary cases which we have cited and from which we have quoted that there has been alleged or proved any threat or danger of violent conflict between the States, but in all of these cases it would seem that the mere question of a dispute over the boundaries of States was sufficient to give the court jurisdiction irrespective of the fact as to whether there was any imminent danger of violent or forcible conflict between the States, or the citizens thereof.

We think therefore that we have conclusively shown by the evidence and by judicial authority that the claim of the State of Mississippi, respondent herein in this demurrer, is utterly without foundation and that this honorable court is sully seized with jurisdiction in this cause under the provisions of the Constitution of the United States relating to controversies between States.

STATEMENT OF THE CASE.

This suit is instituted by the State of Louisiana in her sovereign capacity as a State against the State of Mississippi in her sovereign capacity as a State to secure a judicial determination of a boundary line separating her in part from the State of Mississippi, and to obtain a decree requiring the State of Mississippi to recognize and observe said boundary line.

Geographically, the State of Louisiana lies on the gulf of Mexico, and is the central Gulf State of the Union, while the State of Mississippi, fronting on Mississippi sound to her south, lies just to the east and north of Louisiana. Both are sovereign sister States in our North American Republic.

Louisiana was the first seat of settlement in that great territory purchased by the United States from the French Republic in 1803, and Mississippi takes her name from that great American river that drains, through the Mississippi valley, over half of the area of our country, and forms the greatest extent of the State of Mississippi's western boundary.

In this proceeding, the State of Louisiana claims a certain line to be the proper boundary line separating her in part from the State of Mississippi, while the State of Mississippi disputes the correctness of the Louisiana line and contends for a separate and distinct line of her own designation, as being the proper boundary to separate the two States.

The area in dispute is located between these two lines, the Louisiana line on the north and the Mississippi line on the south, and consists of more than three hundred (300) square miles of land and water, valued at from two millions ($2,000,000) to five millions of dollars ($5,000,000) by reason of its rich oyster-producing properties, and is now claimed by each State in its sovereign capacity to be its property, to the exclusion of any rights by the other State. This disputed area lies to the east of the southern portion of Louisiana and south of the western portion of Mississippi and embraces the waters of Lake Borgne and Mississippi sound which contain certain sea marsh islands, named Grassy, Half Moon or Grand, Round and Le Petit Pass islands and an island called *Isle à Pitre*. The disputed area in fact extends into the *peninsula* of St. Bernard, Louisiana, or the *Louisiana marshes*, which form part of the *coast* of the State of Louisiana, until the boundary line claimed by Mississippi is reached at a distance of eighteen miles from her main shore, parallel to which the Mississippi boundary line is then claimed to run.

Mississippi sound is an arm of the gulf of Mexico, extending up in between the States of Louisiana and Mississippi at this point, and ends in a body of water, also an arm, inlet or estuary of the gulf, called Lake Borgne. This latter body

of water is not a *lake* in the true geographical sense, because it is a salt-water body of water opening into Mississippi sound, and, as its French name, *Borgne*, implies, it is *one-eyed* in that it has one wide eye or opening into said sound.

Louisiana contends that the proper boundary line separating her from Mississippi in the disputed area is the line of the deep-water sailing channel through this water area, extending from the mouth of Pearl river and emptying into the open waters of the gulf of Mexico, and she has set forth this line in detail on her map, Exhibit "E," bound in the Louisiana Atlas of Maps, page 60, and on diagram No. 1, Record, p. 4.

Mississippi contends that the proper boundary line separating her from the State of Louisiana in the disputed area is a line parallel to her main shore and eighteen miles distant therefrom, and she has set forth this line on her map, Mississippi "A," bound in the Mississippi Atlas of Maps, page 1, also found in the Record, p. 88.

In other words the State of Mississippi, in her defense on the merits to the bill of complaint filed herein by the State of Louisiana:

First. Denies that the deep-water channel sailing line extending from the mouth of Pearl river and emptying into the open water of the gulf of Mexico is the proper boundary line there separating the dominions of the two States.

Second. Contends that she owns the sea marsh islands which we have named as lying south of that deep-water sailing channel line, and

Third. Contends that she owns a portion of the peninsula of St. Bernard, in the State of Louisiana, namely, that portion of the area commonly called the *Louisiana marshes*, which would come within the projection of her eighteen-mile line.

The State of Louisiana, on the other hand, contends, as set forth in her bill of complaint, that—

First. Louisiana owns the *peninsula of St. Bernard* in its entirety, because it is and always has been part of her parish or county of St. Bernard, and that these *Louisiana marshes* at the eastern extremity of her St. Bernard peninsula form part of the *coast* line of the State of Louisiana.

Second. Louisiana owns these islands lying in Lake Borgne and Mississippi sound between that *coast* line and the deep-water channel line, because these islands were given to Louisiana by the act of Congress making her a State, giving her all islands within three leagues, or nine miles of her *coast* and that Congress could not, five years later, take these islands away from Louisiana and give them to Mississippi, and

Third. That the deep-water sailing channel line emerging from the mouth of Pearl river and emptying into the gulf of Mexico is, in truth and fact, the proper water boundary line between the two States in that locality; that it has in fact been recognized as such by both States and is so recognized by all rules of international law.

This statement, made as briefly as the facts will permit, we consider a fair presentation of the substance of the dispute between the two States. And we would now propose to show how the record and the law of the case establish the correctness of the claims of the State of Louisiana in all their details. This leads us therefore to a consideration of the

MERITS OF THE CASE.

As we have previously stated the area in dispute, as bounded by the different lines contended for by each State, is composed of land and water, ownership of and sovereignty

over the land carrying with it jurisdiction, ownership and sovereignty over the adjacent waters as established by international law.

On the merits of the case, as we now approach them, we will proceed to show that the record establishes conclusively that the whole disputed area has always, and does now, belong to, is the property, and forms part, of the State of Louisiana.

This fact we will establish by showing that, of the disputed area,

First. The State of Louisiana owns the peninsula of St. Bernard in its entirety.

Second. The State of Louisiana owns the islands lying north of this peninsula and claimed by her.

This, with the water area, comprises the whole disputed territory.

Louisiana's title to and ownership of this territory we can establish—

I. By the words themselves of the act of Congress, creating Louisiana a State.

II. By the establishment of the deep-water sailing channel line as the proper boundary, south of and on the Louisiana side of which these lands and waters lie.

III. By prescription, usucaption, acquiesence and acknowledgment in favor of Louisiana, and by her exercise of acts of ownership over said territory.

We shall therefore consider the first of these propositions, namely:

I.

THAT THE STATE OF LOUISIANA BY THE WORDS OF THE LAW OWNS THE PENINSULA OF ST. BERNARD IN ITS ENTIRETY AND THE ISLANDS IN DISPUTE, TOGETHER COMPOSING THE DISPUTED AREA.

While the ownership of the St. Bernard peninsula in its entirety is closely related to the ownership of the islands in dispute we nevertheless feel that it is best to treat this subject in two parts, considering first the ownership of the peninsula and second that of the islands and we shall therefore now consider and discuss Louisiana's ownership of the peninsula of St. Bernard.

FIRST.

The State of Louisiana was admitted as a State into the Union of the United States of America by an act of Congress approved April 6, 1812 (Record, p. 1022, document No. 24), and the following was the language used as describing the geographical and territorial limits of the State to wit:

"Beginning at the mouth of River Sabine, thence by a line to be drawn along the middle of the said river, including all islands, to the thirty-second degree of latitude; thence due north to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the River Mississippi; thence down the said river to the River Iberville; and from thence along the middle of said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico; thence bounded by the said gulf to the place of beginning; *including all islands within three leagues of the coast*, etc." * * * (Italics ours.)

A sketch showing the limits of the State of Louisiana as thus defined is to be found in the Record, p. 4, as diagram No. 1, made part of the bill of complaint. It will be noted that the point of starting the description begins at the lower left-hand corner of the map or the southwest corner of the State and thence proceeds around the State to the point of beginning. It is to be noted also that the area described in the act of Congress as being contained within the foregoing bounds, is part "of the territory or country ceded under the name of 'Louisiana' by the treaty of Paris on the thirtieth day of April, one thousand eight hundred and three, between the United States and France."

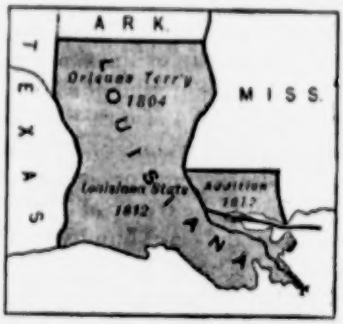
A few days later by an act of Congress, approved April 14, 1812, additional territory was added to the State of Louisiana (Record, p. 1023, document No. 25) embraced within the following limits to wit:

"Beginning at the junction of the River Iberville with the River Mississippi; thence along the middle of the Iberville, the Amite river, and the Lakes Maurepas and Pontchartrain to the eastern mouth of Pearl river; thence up the said eastern branch of Pearl river to the thirty-first degree of north latitude; thence along the said degree of latitude to the River Mississippi; thence down the said river to the place of beginning, shall become, and form part of the said State of Louisiana, and be subject to the constitution and laws thereof in the same manner and for all intents and purposes, as if it had been included within the original boundaries of the said State."

A glance at diagram No. 2 (Record, p. 4), following the red line shown on the east of the State, will show the added territory. The River Iberville is called on this map Bayou Manchac, by which name that stream is now known, and it will be found at the southwest, or lower left-hand corner, of the added territory.

The following outline sketch, taken from the Bulletin of the United States Geological Survey (Record, p. 1032), will

tend to more clearly indicate the boundary outlines of the State of Louisiana.



HISTORICAL DIAGRAM OF LOUISIANA.

We find in the first act providing for the creation of the State of Louisiana the same general eastern boundary as we will hereafter show was adopted in the several treaties affecting this country in its former transfers, except the words "gulf of Mexico" are used in place of the word "sea," although both refer to the same body of water. In order to reach the open gulf of Mexico from the middle of Lakes Maurepas and Pontchartrain, it was necessary, as we know today, for the line to extend through the Rigolets into Lake Borgne, as the "Rigolets" was the main channel connecting these two bodies of water. To get from Lake Borgne into the open water of the gulf of Mexico, beyond Chandeleur islands and around to the western boundary of Louisiana, it was necessary to follow the deep-water channel, north of Half Moon or Grand island through Mississippi sound, and thence by the pass between Cat island and Isle à Pitre, north of Chandeleur islands into the open gulf of Mexico and around to the western boundary of Louisiana. This is the same boundary contended for by Louisiana today, except that by a subsequent act of Congress, just mentioned and quoted from, part of the eastern line of Louisiana was moved eastward to the middle of Pearl river.

The effect of this act of Congress increasing Louisiana's limits was to move part of the eastern boundary eastward from the Mississippi river to Pearl river, and to give to Louisiana that country lying south of the Mississippi territory; that is, south of the thirty-first degree of north latitude, and north of the southern boundary formed by the River Iberville, the middle of Lakes Maurepas and Pontchartrain and the Rigolets.

The Rigolets as seen from maps Nos. 7 and 59, (Louisiana Atlas of Maps, pages 2 and 53) is a strait or *gut* connecting the waters of Lakes Pontchartrain and Borgne, both of which are in fact salt-water bodies of water and were originally arms of the sea (Record, p. 335, testimony of Dr. W. C. Stubbs).

After the adoption of this act of April 14, 1812, the eastern boundary line of the State of Louisiana entered Lake Borgne to the south, by Pearl river in place of the Rigolets. Map Exhibit "E" (Louisiana Atlas of Maps, page 60). In its extension to the eastward of the junction of Pearl river and Lake Borgne, the boundary line remained the same; that is, the deep-water channel north of Half Moon or Grand island, thence through Mississippi sound by the channel or pass between Cat island and Isle à Pitre, north of Chandeleur islands into the open gulf of Mexico.

This necessarily puts the peninsula of St. Bernard entirely in the State of Louisiana.

Many maps showing this general locality have been made since Louisiana became a State and every one of them have recognized the peninsula of St. Bernard as, in its entirety, inclusive of the *Louisiana marshes*, forming a part of the State of Louisiana. An examination of the maps of this country made at a date prior to the creation of Louisiana as a State as well as of those at the time of her being given statehood and for the next few years thereafter, show the St. Bernard peninsula to be geographically a true part of the State of Louisiana or of the area of country that was to form said State; that the said St. Bernard peninsula projected

itself as a distinct and well-defined arm of land out into the waters of the gulf of Mexico, branching off as an arm or projection from what was and is, indisputably, the main body of the land composing the State of Louisiana and forming part of it.

Of the maps collected by the State of Louisiana and offered in evidence in her atlas of maps, the following of an early date show the peninsula of St. Bernard to be naturally, topographically, and geographically a part of the present State of Louisiana, to wit:

1st. Carte Reduite des Costes de la Louisiane, prepared for the French admiralty by M. Le Duc de Choiseul in the year 1764. Map No. 8*a*, Atlas, p. 3.

2d. Map of the course of the Mississippi river from the Belize to Fort Charters, prepared by Lieutenant Ross of the British army in the year 1765. Map No. 11*a*, Atlas, p. 4.

3d. Map of the outlets of the Mississippi river, prepared by the Dutch in the year 1766. Map No. 9*a*, Atlas, p. 3.

4th. Map of the coast of West Florida and Louisiana, prepared by Thomas Jeffreys, geographer to His Majesty the King of England, in the year 1775. Map No. 10*a*, Atlas, p. 4.

5th. A plan of the coast of west Florida and Louisiana prepared by George Gauld, M. A., for the British admiralty in the year 1778. Map No. 63, Atlas, p. 56.

6th. Ellicott's survey of the *southern boundary* of the United States as a commissioner for the United States in that Government's treaty with Spain to establish that line, 1798 to 1801. Maps Nos. 50 and 51, Atlas, p. 46.

7th. Carte Genéral du Terretóire d'Orléans, prepared by B. Lafon in the year 1806. Map No. 19, Atlas, p. 8.

8th. A general map of the seat of war in Louisiana and West Florida. This refers to the war of 1812, between the United States and the British, which ended in the battle of New Orleans, and the map was made by Lacarrier Latour,

an engineer officer serving with General Jackson. Map No. 34*a*, Atlas, p. 32.

These maps were all of a period before Louisiana was created a State and represented the cartography of the country in so far as it was possible to lay it before the Congress of the United States if any such thing was done at the time that Congress was creating, or preparing to create, the State of Louisiana. If Congress saw these maps and had them before it, then it is to be presumed that it had in mind the marshy outline of the State of Louisiana when it made use of the word *coast* in describing this outline as distinguishable from the word *shore* subsequently used in the act creating the State of Mississippi, the word *shore* implying more stability of soil and definiteness of geological outline than that indicated by *coast*.

As indicating what it was presumed Congress had intended as forming the limits of the State of Louisiana, we have but to continue our examination of these maps, and we find that those immediately following the creation of the State of Louisiana recognized her ownership of the St. Bernard peninsula, to wit:

9th. New chart of the West Indies, gulf of Mexico and northern provinces of South America, prepared by Joseph Dessieu in the year 1813. Map No. 58*a*, Atlas, p. 52.

10th. Map of Louisiana, prepared by M. Cary in the year 1814. Map No. 48, Atlas, p. 45.

No. 11. A map of the State of Louisiana, prepared by Wm. Darby in the year 1816. Map No. 20*a*, Atlas, p. 9. Accompanying the second edition of this map, published in 1817, there was a letter-press explanation of some features contained on the map, as follows: "On the map accompanying the book is the following entry on the peninsula which is part of the present parish of St. Bernard, 'This peninsula has never been surveyed northeast of Bayou Terre aux Bœufs; the coast and interior remain but imperfectly known. The surface is flat, and but little elevated above the level of the

sea'" (document No. 68, p. 1140, Record). And again the same author says in his Immigrants' Guide, published in 1818: "The force of the sea is broken by the long peninsula that bounds Lake Borgne on the southeast and by a chain of islands south of Malheureux islands, Marianne islands, Cat island, Ship island, Isle aux Petit Bois, and Dauphin island. The bottom of this strait is soft sand" (document 69, Record, p. 1141). The author is speaking of what is now known as the Mississippi sound and is describing how the force is broken by the chain of islands and the peninsula of St. Bernard.

No. 12. Map of the United States with the contiguous British and Spanish possessions, prepared by John Melish in the year 1816. Map No. 57*a*, Atlas, p. 51. The boundaries on this map are those recognized by the United States and Spain as correct in the treaty between the said powers in the year 1819 concerning the cession of East and West Florida, which treaty was ratified in the year 1822 (Record, p. 1144).

No. 13. Map of Louisiana and Mississippi, prepared by H. S. Tanner in the year 1819. Map No. 66*a*, Atlas, p. 59.

If we were to follow our investigation down through the past century to the date this suit was instituted, we would find that every cartographer in the *world* has recognized Louisiana's ownership of the St. Bernard peninsula in its entirety, and not one has, on any map, indicated that Mississippi had any rights therein.

Even if it be that Congress did not have any maps before it when considering and passing the act creating the State of Louisiana, then we say it is provable by other means that what forms today the peninsula and parish of St. Bernard formed part of the province of Louisiana as acquired by the United States from France and formed part of the territory placed by Congress within the limits of the State of Louisiana.

This fact that the peninsula of St. Bernard was part of

ouisiana, part of the island of Orleans, and part of the ter-
tory of Orleans, and part of the State of Louisiana, is
so established from the record, in the report made by Mr.
homas Jefferson, then President of the United States, to
ongress, November 14, 1803 (Record, pp. 1015 *et seq.*, Docu-
ent No. 19), entitled "An Account of Louisiana," from
hich we make the following extract:

"The object of the following pages is to consolidate the
formation, respecting the present State of Louisiana fur-
shed to the Executive by several individuals among the
st informed on the subject.

"Of the province of Louisiana, no general map suffi-
ently accurate to be depended upon, has been published,
r has any been yet procured from a private source. It is,
deed, probable that surveys have never been made upon
extensive a scale as to afford the means of laying down
e various regions of a country, which, in some of its parts,
pear to have been but imperfectly explored."

* * * * * * *

We then find the further sub-title and comments.

"St. Bernard:"

"On the east side of the Mississippi, about five leagues
low New Orleans, and at the head of the English bend, is
ettlement known by the name of the Poblacion de St.
rnardo, or the Terre aux Bœufs, extending on both sides
a creek or drain, whose head is contiguous to the Missis-
pi, and which flowing eastward after a course of eighteen
gues, and dividing itself into two branches, falls into the
and Lake Borgne. This settlement consists of two
rishes, almost all the inhabitants of which are Spaniards
m the Canaries, who content themselves with raising
ls, corn and garden stuff for the market at New Orleans.
e lands cannot be cultivated to any great extent from the
nks of the creek on account of the vicinity of the marsh
hind them, but the place is susceptible of great improve-
nt and of affording another communication to small craft
from eight to ten feet draft, between the sea and the
ssissippi."

The stream of water thus referred to by President Jefferson as a creek or drain was Bayou Terre aux Bœufs seen on the maps of today (geological maps of St. Bernard, map No. 18, Atlas, p. 7), and the branches referred to, the one extending into Lake Borgne, is the Bayou la Loutre of today, and the other branch to the sea, or gulf of Mexico, has retained the original name of Bayou Terre aux Bœufs. These are the bayous that, it will be seen, are referred to by Dr. William C. Stubbs in his geological discussion of this section as forming in past ages by the deposit of their alluvion, the peninsula of St. Bernard. It will be noted also that the marshy characteristics of the country are also here mentioned by President Jefferson over a century ago; and more important still is the fact that an extension of this bayou eighteen leagues, or fifty-four miles, eastward from the Mississippi river would carry us right through the *Louisiana marshes*, the territory that Mississippi is claiming as hers today. President Jefferson's memoranda, data and information were purposely furnished to Congress with the express intent of providing that body with the best necessary and indisputable knowledge for its future guidance and action in erecting Territories and States from the newly acquired province. This communication of Mr. Jefferson's is presumably what Congress acted on, in fixing the boundaries of the new State of Louisiana. All of this, we respectfully submit, clearly establishes that under the act of Congress of 1812 creating the State of Louisiana, this St. Bernard peninsula formed then a part of the parish of St. Bernard, State of Louisiana, and Louisiana's title to it cannot now be denied by the State of Mississippi.

Let us now therefore take up our second proposition:

Second.

That the State of Louisiana owns the islands lying north of this peninsula and within nine miles distance therefrom.

We have just seen how the St. Bernard peninsula forms part of the parish of St. Bernard, and part of the State of Louisiana. This peninsula has a distinct coast line from Shell beach on the south shore of Lake Borgne up by Malheureux point on to Isle à Pitre at its northeast extremity. This coast line forms part of the *coast* of the State of Louisiana, as contemplated and understood by the Congress of the United States, when it passed the act creating the State of Louisiana and *giving her all islands within three leagues or nine miles of her coast.* The islands claimed by Louisiana in this suit are all within three leagues or nine miles of her said coast. According to the strict letter of the law, as set forth in the act of Congress, these islands are the property of the State of Louisiana, her ownership, under this legal title of donation, dating from April 6, 1812. Mississippi's claim as a State to islands within six leagues of her shore dates from the act of Congress approved December 10, 1817, or nearly six years subsequent to the date of Louisiana's claim. It is true that there were enabling and other acts passed at earlier dates concerning both States as Territories, the one as the Territory of Orleans and the other as the Territory of Mississippi, under which Louisiana could also prove priority of claim and title, but for the present we are considering only the acts of the Congress of the United States creating these two Territories into States and admitting them into the Union. It was only when they were admitted into the Union as States that they would be first able to claim the benefits of all constitutional provisions affecting the integrity of their domains. All previous congressional and other acts and legislation can be considered only in their relation as affording

an explanation of what Congress had really intended to do. The State of Louisiana, as a State had been given these islands as part of her territory and had owned them as such for a period of over five years before the State of Mississippi was created. Louisiana having the prior title to the islands is protected in her ownership thereof by the provisions of our Constitution, insuring to the States the integrity of their domains unless a change be made with the State's consent.

Article IV, section 3, of the Constitution of the United States provides in the second clause that—

"*Nor shall any State be formed by the junction of two or more States without the consent of the legislatures concerned as well as of the Congress.*"

It might perhaps be contended that section 3 of article IV of the Constitution of the United States in its prohibition as to taking territory from one State and adding it to another only referred to the creation of a new State or States out of the territory of "*two or more States*," but this would be a very narrow construction and interpretation, and the intent to the contrary is shown in the last clause of the same section, which provides that "the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; *and nothing in this Constitution shall be so construed as to prejudice* any claims of the United States, OR OF ANY PARTICULAR STATE." (Italics and capitals are ours.)

It follows, therefore, that all islands within nine miles of the Gulf shore (the littoral line) were by the act of 1812 made a part of the domain of Louisiana. Congress could not by the subsequent act (Mississippi) of 1817 take away any portion of the territory of the State of Louisiana and give it to the State of Mississippi "so as to prejudice any claims" of the particular State, Louisiana.

Further it is a general rule, that where there are two conicting titles, the elder shall be preferred. * * * So where there are conflicting rights as to real property, courts f equity will inquire, not which party was first in possesion, but under what instrument he was in possession, and when his right is dated in point of time; or if there be no nstrument, they will ask when did the right arise,—who ad the prior right" (Broome's Legal Maxims, 7th Am. ed. . 355, with authorities in note 5).

And this principle has been frequently applied by this onorable court in cases of boundaries between States where he grants to the colonies prior to the establishment of our Government have seemed to conflict. So in Rhode Island s. Massachusetts, 12 Peters, 658, it is said in the syllabus, "No court acts differently in deciding on boundary between States, than on lines between separate tracts of land," and hat the rules and principles of equity would equally apply between States, as between individuals. The conclusion herefore irresistibly follows from the above exposition of the facts and the law that the peninsula of St. Bernard in its entirety formed an integral part of the State of Louisiana, and that the islands within nine miles of the coast of that peninsula once given by Congress to Louisiana could not be subsequently given by Congress to the State of Mississippi.

II.

LOUISIANA'S TITLE TO THE DISPUTED AREA IS ESTABLISHED BY THE FACT THAT THE SAID AREA IS SOUTH OF AND ON THE LOUISIANA SIDE OF THE DEEP-WATER CHANNEL BOUNDARY LINE AND AS THIS DEEP-WATER CHANNEL SAILING LINE IS THE CORRECT WATER BOUNDARY BETWEEN THE STATES AT THIS POINT ALL LAND AND WATER SOUTH OF IT IS THE PROPERTY OF THE STATE OF LOUISIANA.

But if we suppose, for the sake of argument, that what we have already said as to the conclusiveness of Louisiana's claim under the boundaries laid down in the acts of Congress admitting her and the State of Mississippi into the Union is not deemed by your honors sufficiently clear to settle the issue in this case; and if there be any lingering doubt as to the plain intendment of Congress in adopting the language that is contained in these acts, then we say that Louisiana's claim to the disputed territory is clearly established by the fact that the deep-water sailing channel line in this region is the true boundary line between the two States and that if it be adopted as the true boundary it gives to Louisiana all of the disputed area.

Existence of Deep-water Channel.

This deep-water sailing channel line claimed by Louisiana as the proper boundary between the two States exists today and is shown on the United States Coast and Geodetic Survey of that section, (map No. 59, Louisiana Atlas of Maps, p. 33) as emerging from the mouth of Pearl river and extending east between Lower Point Clear and Grand island, it being called *Grand Island pass* at that point, and is shown by the coloring and the depth of the water indicated on the chart. From this point it separates into two branches, one extending

northeast, in which branch we have no interest; and the other branch extending eastward, the one we are interested in, is indicated by a black line as it passes on between Cat island and Isle à Pitre, which black line carries with it certain sailing directions, designating it as the sailing line. This extension of the main Grand Island Pass channel by the *sailing channel*, succeeded by the *South Pass* and *Cat Island channels*, constitute the deep-water channel claimed by the State of Louisiana to be the proper boundary line between the States in this region. That it exists to-day there is no dispute. That it has existed for the past one hundred years and was in existence when and before Louisiana was created a State we shall now proceed to show, and the further fact that it is the same as the channel of today. As establishing this fact we find that the legislature of the State of Mississippi by an act approved February 14, 1839, provided for a survey of the Mississippi coast (Record, p. 2120, Mississippi document No. 99).

An engineer named John Wheeler was employed by his excellency A. G. McNutt, governor of the State of Mississippi to make this survey and a report embodying the same. The survey and report are given in full in the record (Record, p. 1145, document No. 73) and the deep-water channel which we have just been describing is shown in detail in the sketch (Record, p. 1148) the depths of water constituting the channel being given. A comparison of this sketch of 1839 with the Coast and Geoedetic Survey map No. 59 of today will show the channels indicated by each to be the same channel.

If we now refer to the map made by Mr. George Gauld, M. A., for the British admiralty in the year 1778, or long before Louisiana was created a State, (map No. 63, Louisiana Atlas of Maps, p. 56,) we note, from the relative depths of water given, the existence of this same channel extending out to the gulf of Mexico southwest of Cat island, showing it to be the same channel noted on the maps in subsequent

years and which in fact was used in part by the British in the war of 1812 in attacking the city of New Orleans (map No. 34a, Louisiana Atlas of Maps, p. 32) which shows that a large part of this channel was used in the instance of the expedition going in the direction of Pearl river from the gulf of Mexico. It is true that this force started from a point in the next eastward channel between Cat and Ship islands but they soon took up the deep-water channel of today, and it will be noted that another part of the force entered between Cat island and Isle á Pitre showing the existence then of that deep-water pass forming also a part of the channel of today.

This channel is the only deep-water channel between the points in question, namely the mouth of Pearl river and the open waters of the gulf of Mexico and although the State of Mississippi proved that you could sail through the Louisiana marshes in certain places with very light draft boats no recognized channel through them was proven to exist.

In support of this proposition we cite the testimony of two of Mississippi's own witnesses, Captains William Goranflo and John Walker.

Captain Goranflo (Record, pp. 1247–'8) testifies that the deep-water channel we have just described is the deep-water sailing channel; that there is no other channel; and that it has always been there.

Captain Walker (Record, pp. 1270 to 1275) testifies that he knows the deep-water channel; knows it to be the one contended for by Louisiana as the boundary line; knows that it existed as the deep-water channel in the year 1856; and knows of no other channel.

Mr. J. B. Baylor, an assistant of the United States Coast and Geodetic Survey, who happened to be detailed in Louisiana on some surveying work in the neighborhood of the disputed territory, testified in this case while he was in Louisiana. Mr. Baylor had been one of your honors' commissioners in the boundary settlement between the States of

Virginia and Tennessee. Mr. Baylor testified (Record, p. 418) that he was familiar with the disputed area; that he knew the deep-water channel and designated it with the letters C C on map No. 17 (Louisiana Atlas of Maps, p. 6); that he knew of no other channel and that there was no channel recognized as such, through the Louisiana marshes.

We have now shown the existence in the past and today of this deep-water channel. It carried into the open gulf of Mexico the waters brought down by Pearl river and it is only reasonable to suppose that geologically it has existed ever since Pearl river has been a river, as it had its functions to perform in connection with said river in carrying its waters to the sea and was in fact the child of the current of those waters, being created by them.

We will now undertake to show in support of our third proposition that this deep-water channel, for the following reasons:

1st. Is a boundary created by nature and that the soils separated by it and forming the limits of the two States are of natural geological difference.

2d. That it is the boundary line that was recognized by England, France, and Spain in their ancient treaties affecting their separate interests in this country.

3d. That it was the boundary line as recognized by the acts of Congress and treaties of the United States referring to this section of the country and dividing it up.

4th. That it was the boundary line so recognized by the States of Louisiana and Mississippi in all their acts as the boundary separating them.

5th. That it is the proper boundary line between the two States as recognized by all rules of international law.

We will therefore consider these propositions in the order stated.

First.

That the deep-water channel is a boundary created by nature and that the soils separated by it and forming the limits of the two States are of natural geological difference.

We feel that we can under this heading show that nature made the deep-water channel her boundary in this area and that the subsequent enactments of man were but a confirmation of this basic principle.

In the 136 U. S., 479, Indiana vs. Kentucky, some stress was laid upon the geological character of the territory in dispute as compared with that of the two States and this geological affinity and similarity was held to be confirmatory of other evidence in the case.

A glance at any of the general maps of the United States filed in this cause and appearing in the Atlas of Maps will show that the State of Louisiana lies between the States of Mississippi to the east and Texas to the west. All these States border on the gulf of Mexico, except in this, that Mississippi's main land borders on Mississippi sound, an arm of the sea or gulf of Mexico, formed by a chain of large islands extending westward from Mobile bay in Alabama to Cat Island channel, separating Cat island from Isle à Pitre in Louisiana. The southern portion of Louisiana is fanlike in shape, and geologically is of alluvial formation, containing the delta of the Mississippi river. A part of this delta formation is the peninsula of the parish of St. Bernard which extends out eastwardly, south of the waters of Lake Borgne and Mississippi sound.

Beginning at the northeast corner of Louisiana, the boundary separating her from the State of Mississippi to her east is the thread of the channel of the Mississippi river. This boundary extends southward until it reaches the 31st de-

gree of north latitude, whence it then runs directly east along this degree of latitude until Pearl river is reached. It then extends south along the channel of that river, until it reaches Lake Borgne. Pearl river flows into Lake Borgne, Lake Borgne into Mississippi sound, and Mississippi sound into the open gulf of Mexico through South pass, separating Cat island from Isle à Pitre. There is and always has been a thread of flow, or a well-defined deep-water channel or sailing line, extending from the mouth of Pearl river into Lake Borgne, north of Half Moon or Grand island into Mississippi sound, and thence, through that sound, along the same well-defined channel between Cat island and Isle à Pitre, north of Chandeleur islands into the open waters of the gulf of Mexico. As this deep-water channel is but a natural continuation of the channel of Pearl river, the admitted boundary between certain portions of Louisiana and Mississippi, Louisiana contends and has always contended that it is and always has been the correct boundary line separating her from the State of Mississippi in these waters.

These same maps show the Mississippi river to be the main outlet of the great watershed in the center of the United States, formed by the ranges of the Allegheny and Rocky mountains. The delta of this great river is in, and forms today, the southern part of the State of Louisiana. Dr. William C. Stubbs, State geologist of the State of Louisiana, (Record, pp. 332 *et seq.*) testifies at length and interestingly concerning the geological history and formation of the State of Louisiana. Briefly stated, the substance of his testimony is that the State of Louisiana is formed by the alluvion of the Mississippi river, gathered from the soil of the twenty-nine States and Territories drained by this river, deposited along the banks of the river when there were no levees and discharged into the gulf of Mexico at its mouth, each year forming land which never existed before. The small particles of earth are carried in suspension by the waters of the river so long as these waters are in motion, and the load is

dropped as soon as the movement of the waters is suspended, either by the water overflowing the banks or discharging into the comparatively still waters of the gulf of Mexico. At each annual rise of this mighty river, it would overflow its banks and deposit a layer of alluvion, decreasing in thickness as the distance from the banks increased. Lateral streams were formed where the river would break through its banks, and these streams would in turn overflow, forming banks on each side of them, which would be built up by the annual overflow and deposit of alluvion. That the Louisiana alluvion was characteristic and could be readily recognized by any geologist; that one of the lateral streams branching off from the Mississippi river in ancient times was Bayou Terre aux Bœufs; that it was this bayou and its branch called Bayou la Loutre that by the deposit of its suspended sediment or alluvion formed what is today the parish and peninsula of St. Bernard (Record, p. 334).

A glance at the United States geological map No. 18 (Louisiana Atlas of Maps, p. 7) will show that Isle à Pitre forms the northeastern extremity of the St. Bernard peninsula; that it was just to the west of, and immediately adjacent to the deep-water channel boundary line claimed by Louisiana at that point. Just across this deep-water channel, and the first land immediately to the east of it, is Cat island which is admitted by Louisiana, on the deep-water channel theory, to be the property of the State of Mississippi. After leaving the mouth of Pearl river and the channel between Grand or Half Moon and St. Joseph islands, this point between Isle à Pitre and Cat island is the first where other lands of the two States nearest approach each other in the whole course of this water boundary line. Samples were taken of the earth of Isle à Pitre and Cat island (Record, p. 298, testimony of Alfred C. Ruiz) and have been offered in evidence and appear in the original, that of Isle à Pitre as sample No. 1, and that of Cat island as sample No. 2. These samples were submitted to Dr. Stubbs as an expert. He at once recog-

ized sample No. 1 taken from Isle à Pitre, on the Louisiana de of the channel, as detritus or alluvion brought down by ie Mississippi river and belonging to the same geological ormation as the other parts of Louisiana. Sample No. 2, aken from Cat island, Dr. Stubbs recognized (Record, pp. 34 and 342) as being of an entirely different formation and ause from sample No. 1, he claiming sample No. 2 to be a and washed up by the waves from the sea, similar to that f the whole of Mississippi's chain of islands to the east-ard. We thus see two different geological formations, one n each side of this deep-water channel, the different forma-ons belonging to the two different States, so that the deep-ater channel seems to have been a recognition of a bound-ry created by nature, and separating formations of natural ifference and distinction. All of the Mississippi islands irting her shore are of this sea-sand formation, while all ose of Louisiana are of this alluvial formation created by ie deposit of sediment or detritus of the Mississippi river nd its lateral tributary bayous, such as those geologically reating the lands forming the disputed area, and as this haracter of soil is the basis of the formation of Louisiana a State, this deep-water channel as a boundary is a recog-tion of natural geological proprieties in the separation of ie two States.

Second.

That the deep-water sailing channel line is the boundary that as recognized by England, France, and Spain in their ancient reaties affecting their separate interests in this country.

The adoption by the Congress of the United States, in the eation of the State of Louisiana, of the line extending down e Mississippi river to the River Iberville and thence rough the middle of Lakes Maurepas and Pontchartrain to e sea, as one of the boundaries of that State was not a new ie established for the first time but was in fact an affirma-

tion and recognition of an ancient line long since established, which in its extension to the open sea must follow the deep-water channel that we have been discussing. That this is true is shown by the treaties that have been negotiated between the various foreign nations from time to time owning this country.

In the treaty of peace between England, France and Spain adopted February 10, 1716, the following language is found in article VII on the subject of the boundary line separating the dominions of England and France in the New World, to wit:

"That for the future, the confines between the dominions of His Britannic Majesty, and those of His Most Christian Majesty in that part of the world shall be fixed irrevocably by a line drawn along the River Mississippi from its source to the River Iberville, and from thence by a line drawn along the middle of this river and the Lakes Maurepas and Pontchartrain to the sea" (Record, p. 1008, document No. 13).

With the information shown on the map No. 24, bound into the Atlas of Maps, p. 10½, we see that the River Iberville is known today by the name of Bayou Manchac and that it is there called Manchac or Iberville river. (See also Record, p. 4, diagram No. 1.) In order for this line, passing through the middle of Lakes Maurepas and Pontchartrain, to reach the open *sea*, it was necessary for it to pass through what is now called the "Rigolets," just west of the mouth of Pearl river, and thence to follow the deep-water channel through the upper end of Lake Borgne, north of Grand, or Half Moon, island, through Mississippi sound, by the deep-water pass between Cat island and Isle à Pitre, north of Chandeleur islands into the open gulf of Mexico, which was then commonly known as the *sea*. There was no other rational route for the extension of such a line to take in describing the respective limits of the nations at interest. According to this treaty, England retained the port of Mobile and its river and

erything east of the Rigolets. The island of Orleans, rmed by the River Iberville, Lakes Maurepas and Pontartrain, the Rigolets, the gulf of Mexico and the Mississpi river remained the property of France.

This same boundary line is found in another translation this treaty (Record, p. 1009, document No. 14).

In the treaty between the same nations, on February 10, 63 (Record, p. 1010, document No. 15), practically the me language is used in describing the boundary line sepating the British from the French territory and stating hat belonged to each nation. In an extract from this aty (Record, p. 1863, Mississippi document No. 1) article X provides for the cession by Spain to England of Florida d all that Spain possessed on the continent of North nerica.

In the treaty of September 3, 1783, between England and ain (Record, p. 1865, Mississippi document No. 2) England les East and West Florida back to Spain.

Then by the treaty of St. Idelfonso of October 1, 1800, ain ceded to France—

"The colony or province of Louisiana with the same ext that it now has in the hands of Spain, and that it had ien France possessed it, and such as it should be after the aties subsequently entered into between Spain and other ites" (Record, p. 1012, document No. 17).

On April 30, 1803, France ceded to the United States the ony or province of Louisiana (Record, p. 1012, document . 17), using exactly the same description used by Spain ceding the territory to her, and adding in article II the clusion of the adjacent islands belonging to Louisiana.

In all of these transfers of this territory, there never was y question but that the peninsula subsequently known *the peninsula of St. Bernard was part of the island of leans*, and that this island of Orleans was in fact partly rmed by the extension to the sea of the boundary line

coming down through the middle of Lakes Maurepas and Pontchartrain and finding its way to the sea by the deep-water channel claimed by Louisiana to be the correct water boundary line, separating her from Mississippi, and which has in fact always existed as a boundary line separating and designating different ownerships of country as lying on the respective sides of said boundary line, which was thus recognized by these treaties to exist and to be a proper boundary line to designate and separate their respective domains.

Third.

That the deep-water channel was in fact recognized by the Congress of the United States in its legislation and in the treaties referring to this section of the country, as the proper boundary, and according to which it divided it up.

We will now endeavor to show that just as the treaties of foreign countries recognized, in the words used, the deep-water channel as necessarily forming in part a portion of the boundaries of the province of Louisiana, so did the early acts of the Congress of the United States and the treaties which Congress negotiated in regard to that territory.

We have clearly shown how Louisiana was described prior to her acquisition by the United States. It now becomes necessary for the purpose of this case to ascertain what limits the laws of the United States placed upon her domain.

On March 26, 1804, the Congress of the United States adopted an act dividing the country acquired as Louisiana from France into two parts. The pertinent portions of this act read as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all that portion of the country ceded by France to the United States under the name of Louisiana which lies south of the Mississippi Territory and of an east-and-west line to commence on the Mississippi river at the thirty-third degree of

north latitude, and to extend west to the western boundary of said cession, shall constitute a Territory of the United States under the name of the Territory of Orleans, the government whereof shall be organized and administered as follows:"

* * * * * * *

"SECTION 12. The residue of the province of Louisiana ceded to the United States, shall be called the district of Louisiana, the government whereof shall be organized and administered as follows:"

* * * * * * *

It is true that the boundary description here given is not very elaborate, yet the words used are sufficient to show that Congress intended to include in the Territory of Orleans not only what had constituted the island of Orleans on the left or east bank of the Mississippi river, and referred to in the original treaties, but also further additional lands west of said river, and south of the thirty-third degree of north latitude, but which are not of special interest to us in this case, and the present discussion.

Congress regarded the lands to the east, that were south of the Mississippi Territory and which form the disputed area of today, as part of the original island of Orleans referred to in the original treaties and included in its treaty with France of April 30, 1803, and these were given to the Territory of Orleans, and her southeastern boundary was the original southeastern boundary of the island of Orleans. At that date, the Mississippi Territory did not extend south of the thirty-first degree of north latitude, and its domain did not reach the shore of Mississippi sound or the locality of the disputed area until many years later, as we will see when we come to consider the limits of the Territory, and subsequently, of the State of Mississippi, as fixed by contemporaneous acts of Congress. As we have already stated the transfer of the province of Louisiana by France to the United States included the island of Orleans. We have heretofore given the boundaries of this so-called island.

These boundaries, when extended through the centers of Lakes Maurepas and Pontchartrain, followed Louisiana's present deep-water channel into the sea. It, therefore, appears from the above description of the Territory of Orleans, that what was subsequently called the St. Bernard peninsula was part of the Territory of Orleans, when the Territory of Mississippi had not yet been extended to the waters of Mississippi sound.

The Territory of Orleans remained as such until February 20, 1811, when an act of Congress was approved, entitled:

"An act to enable the people of the Territory of Orleans to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes."

According to this act of Congress, the Territory to form the future State of Louisiana was described as follows:

"That all the inhabitants of that part of the territory or country ceded under the name of Louisiana by the treaty made at Paris on the thirtieth of April, one thousand eight hundred and three between the United States and France, contained with the following limits—that is to say:

"Beginning at the mouth of the River Sabine, thence, by a line to be drawn along the middle of said river, including all islands, to the thirty-second degree of latitude, thence due north to the northernmost part of the thirty-third degree of north latitude, thence along said parallel of latitude to the *River Mississippi, thence down the said river to the River Iberville, and from thence along the middle of said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico*, thence, bounded by said gulf, to the place of beginning, including all islands within three leagues of the coast, etc., etc." (Record, p. 1018, document No. 21). (Italics ours.)

It will be noted from the above that the same language is used in describing the eastern boundary as was used in the ancient treaties, namely: the *Mississippi river to the River Iberville and the middle of that river and Lakes Maurepas and Pontchartrain to the sea or gulf of Mexico*. It is to be ob-

served that this entire eastern boundary of the State of Louisiana is a *water boundary*. The conclusion is therefore irresistible that in extending this water boundary to the open sea or gulf of Mexico or in connecting the middle of Lakes Maurepas and Pontchartrain with the open gulf of Mexico, a water boundary would be used and this naturally contemplates the Rigolets (map No. 7, Louisiana Atlas of Maps p. 2) and the deep-water sailing channel line as being the only natural and rational extension of this boundary line to the open waters of the gulf of Mexico, reaching round to the westward.

And it will be remembered that this identical eastern boundary line was given to Louisiana when she was created a State a little over one year later by the act of Congress approved April 6, 1812 (Record, p. 1022, document No. 24).

And it will be further noted that the addition of territory to the State of Louisiana by the act of Congress approved April 14, 1812 (Record, p. 1023, document No. 25), to which additional territory being added to the State the legislature of Louisiana gave its consent (Record, p. 1024, document No. 26), that the addition of this territory, *did not in any way affect the deep-water sailing channel line as the boundary in the disputed territory*, for the moving of the part of the eastern boundary east to Pearl river caused the boundary line, as it emerged from the channel or mouth of that river, to take up and follow the extension of the already existing deep-water sailing channel line, all of which we have endeavored to set forth on the map Exhibit "E," (Louisiana Atlas of Maps, p. 60) to which we respectfully direct your honors' special attention.

We think this clearly shows a recognition by Congress of the deep-water sailing channel line as being the proper boundary in the disputed area. Yet as additional proof of this fact a study of the legislation of Congress shows that it was clearly the intention of Congress, in all of its early legislation, that the State of Mississippi, either as a State or

previously as a Territory, should have no rights in the neighborhood of the locality, the ownership of which Mississippi disputes today.

The Domains of Mississippi.

The first reference to Mississippi in the acts of Congress is the one approved April 7, 1798 (Record, p. 1014, document 18) entitled:

"An act for an amicable settlement of the limits with the State of Georgia and authorizing the establishment of a government in the Mississippi Territory" the pertinent part of which reads as follows:

"SEC. 3. *Be it further enacted*, That all that tract of country bounded on the west by the River Mississippi, on the north by a line drawn due east from the mouth of the Yassous to the Chattahoochee river, *and on the south by the thirty-first degree of north latitude* shall be, and is hereby constituted one district to be called the Mississippi Territory."

* * * * * * *

(Italics ours.)

The Mississippi Territory, therefore, did not extend south of the thirty-first degree of north latitude. This is in conformity with the treaty between Spain and United States adopted October 27, 1795 (Record, p. 1011, document No. 16), wherein the following language is found in article II, to wit:

"To prevent all disputes on the subject of boundaries which separate the territories of the two high contracting parties, it is hereby declared and agreed as follows, to wit:

"The southern boundary of the United States, which divides their territory from the Spanish colonies of East and West Florida, shall be designated by a line beginning on the River Mississippi at the northernmost part of the thirty-first degree of latitude, north of the equator, which from thence shall be drawn due east to the middle of the River Apalachicola or Chattahoochee, thence along the middle thereof

to its junction with the Flint, thence straight to the head of the St. Mary's river, and thence along the middle thereof to the Atlantic ocean."

It was to determine this thirty-first degree of north latitude that commissioners were subsequently appointed by the governments of Spain and the United States, and the American representative, Andrew Ellicott's projection of the line of the thirty-first degree of north latitude is shown in maps Nos. 50 and 51 bound into Louisiana's Atlas of Maps, p. 46, showing that the rights of the United States did not at the time extend south of the thirty-first degree of north latitude at that point.

To further show that the extension of the Territory of Mississippi had not reached the coast of the gulf of Mexico up to 1811, we beg to now refer to an act of Congress approved January 15, 1811 (Record, 1021, document No. 23), whereby the President of the United States, with the consent of the local authorities or in the event that any foreign government attempted to exercise sovereignty over same, was authorized to occupy and take possession of that country lying *east* of the River Perdido and south of the State of Georgia and *Mississippi Territory*. The River Perdido, as will be seen from the maps of today is in the State of Alabama, east of the State of Mississippi and flows into the gulf of Mexico between Mobile bay in Alabama and Pensacola bay in Florida. Mississippi certainly could not claim to own as far south as Mississippi sound or have any rights in the disputed area, when the locality, possession of which the United States was seeking, was not even then in possession of the United States, and the territory mentioned in the act of Congress is a great distance to the east and therefore not in the neighborhood of the disputed territory, and in fact formed a part of what was called *East* Florida and was not a part of *West* Florida.

A few days later than the act just mentioned, or on March

3, 1811, there was approved an act of Congress (Record, p. 1020, document 22), whereby it was provided that the act of Congress of January 15, 1811, in regard to the President of the United States taking possession of the country *east of the Perdido river* and *south of* the State of Georgia and *the Mississippi Territory*, and that this act also, should not be published until the end of the next session of Congress, unless with the consent of the President of the United States.

The purpose of this act was evidently to prevent the government of Spain from knowing what the United States Government was doing in regard to East and West Florida, until matters took a more definite shape. This is indicated by the resolution of Congress approved January 15, 1811 (Record, p. 1025, document No. 27), whereby it was specifically declared that the United States could not permit any foreign government to control the country adjoining its southern boundary.

An act of Congress was approved April 25, 1812 entitled: "An act for ascertaining the titles and claims to land in that part of Louisiana which lies east of the River Mississippi and island of Orleans (Record, p. 1025, document No. 28). In this act it clearly appears that the Mississippi Territory had not yet come south of the thirty-first degree of north latitude as the country mentioned in said act as part of Louisiana is divided into two land districts, which are designated as being separated by Pearl river, and are both said to be *south of the Mississippi Territory*.

There was approved, however, on May 14, 1812, or thirty-eight days subsequent to the creation of the State of Louisiana, on April 6, 1812, an act of Congress which proposed to enlarge the boundaries of the Mississippi Territory, (Record, p. 1027, document No. 30) using the following language, to wit:

"That all that portion of the territory lying east of Pear river, west of the Perdido, and south of the thirty-first degree of latitude be, and the same is hereby annexed to the Mississippi Territory, etc." * * *

Confining the added territory to that east of Pearl river was a recognition of the fact that the country west of Pearl river had already been added to the State of Louisiana by a previous act of Congress. It is very much to be doubted, however, if the country thus proposed to be added to the Mississippi Territory was actually at the time, that is, May 14, 1812, really in the possession of the United States Government to be so added, because it was only on February 13, 1813, or nine months later, that Congress passed an act entitled, "An act authorizing the President of the United States to take possession of the tract of country lying south of the Mississippi Territory, and west of the River Perdido (Record, p. 1027, document No. 29). In this act this country west of the Perdido, and which would mean the country east of Pearl river, for that west of Pearl river had already been incorporated into the State of Louisiana by an act of Congress concerning which there was no concealment, was spoken of as not then, February 12, 1813, being in possession of the United States Government, and the act was passed for the purpose of enabling the President to actually take possession of it. No southern boundary is mentioned in reference to this addition to the Mississippi Territory, but it is not to be presumed that it extended south of the north shore of Mississippi sound, because the St. Bernard peninsula lying to the south already formed a part of the State of Louisiana.

Admitting, however, that Mississippi did have the country south of the thirty-first degree of north latitude, and east of Pearl river added to her domains on May 14, 1812, it was subsequent to the fixing of the limits of the State of Louisiana, and even if her domains extended to the shores of Mississippi sound at that time, there was absolutely no conflict between her boundary and that of the State of Louisiana as set forth in the acts of Congress of the United States, because it was only in 1817 that reference was first made to islands within six leagues of her shore.

The present ground or basis of dispute on the part of the

State of Mississippi arises with the adoption by Congress of an act approved March 1, 1817, or five years after the State of Louisiana was admitted into the Union, entitled, "An act to enable the people of the western part of the Mississippi Territory to form a constitution and State government and for the admission of such into the Union on an equal footing with the original States" (Record, p. 1028, document No. 31), wherein, in describing the boundaries of the area to be included in the State to be formed, the act of Congress uses the following language in reference to the southern boundary in its extension from east to west, as the eastern boundary of the proposed State reaches the gulf of Mexico, to wit:

"Thence due south to the gulf of Mexico; thence westward, including all islands within six leagues of the shore to the most eastern junction of Pearl river with Lake Borgne; thence up said river to the thirty-first degree of north latitude, thence west along said degree of latitude to the Mississippi river, thence up the same to the beginning."

The words, "including all islands within six leagues of the shore," is the legislation on which counsel for Mississippi hang all their hopes as injecting an element of uncertainty in the description of the boundaries of the two States. If these words were introduced in this Mississippi act by Congress because of any lack of familiarity by Congress with the locality being divided up, their presence would not give to Mississippi islands which had been given to Louisiana by acts of Congress adopted many years previous.

Darby, the expert cartographer, to whose map of 1816 we have previously alluded, and who perhaps of all other cartographers, engineers and surveyors, was from his extended experience in the vicinity of Louisiana and Mississippi better and more thoroughly acquainted with the topography of that section, then so remote, difficult of access, and comparatively unknown to the then law-givers, surveyors, and people

generally of the United States says in his letter press accompanying his 1817 second edition map:

"*The islands of Malheureux, Marianne, and Cat island are included in the bounds assigned to both the States of Louisiana and Mississippi. There must have been some oversight in framing the respective acts, which marked the possession of each State*" (Record, p. 1140). (Italics are our own.)

This calls attention to the error, if error it be, of Congress, and the oversight consists not "in framing the respective acts" for the admission of the two States, but in the drafting of the Mississippi act, more than five years after the Louisiana act, and embracing in the Mississippi act, islands which had already been granted to Louisiana. The oversight probably arose in this way: That Congress in defining the southern boundary of Mississippi as "thence westward, including all islands within six leagues of the shore to the most eastern junction of Pearl river with Lake Borgne" overlooked the fact that as this southern boundary line of Mississippi approached the eastern mouth of Pearl river, the space and area of water between the northern coast of St. Bernard in Louisiana, and the southern shore of Mississippi near that point, was less than ten miles in width, and breadth, and that the islands granted to Louisiana more than five years before, were within three leagues or nine miles of her coast, and that the six leagues from the shore of Mississippi could not, at this point, be allowed without interfering with the prior grant to the State of Louisiana. And it is to be borne in mind that the second edition of Darby's map, and the letter press from which this extract is taken were both published in 1817, almost contemporaneously with the admission of Mississippi into the Union in the same year.

We shall presently show, however, that the presence, in the Mississippi act of the words referring to the islands, with a possible proper and legitimate construction, introduces

no element of confusion or uncertainty in the description of the boundaries of the two States. It will be noted, however, from the extract from the Mississippi act just quoted, that the eastern mouth of Pearl river, the thirty-first degree of north latitude, and the Mississippi river, previously fixed as forming the system of Louisiana's eastern boundary, are recognized, which shows an intention on the part of Congress not to interfere with the limits and domain of the State of Louisiana as already fixed and determined, and is we contend an affirmation of the correctness of our proposition that Congress intended in her acts to recognize the deep-water channel as the true boundary between the two States in this section.

Fourth.

That the deep-water channel as the boundary line was so recognized by both States of Louisiana and Mississippi as limiting their respective domains.

We would propose here to show that both the States of Louisiana and Mississippi have, in many of their previous official acts as States, recognized the deep-water sailing channel line as the proper boundary between them, in the disputed area. This recognition, respectively, by the States of Louisiana and Mississippi of the deep-water channel as the boundary line separating them, is shown by their acts in relation to the territory respectively on each side of this line, the one State claiming and exercising ownership in the area south and the other State claiming and exercising ownership in the area north of said deep-water channel, and in fact the volume of evidence in the record on this subject is overwhelming. We, however, propose in our discussion of this case to devote a branch to the special consideration of the subject of Louisiana's acquisition of her rights to the disputed territory by *prescription and usucaption* and to show

that the State of Mississippi has, not only acquiesced in Louisiana's ownership, but has officially recognized the same and we shall therefore defer any further discussion of this branch for the present and take it up under the special heading devoted to it.

Fifth.

That the deep-water sailing channel is the proper boundary line between the two States recognized by all rules of international law.

Aside from the documentary and other evidence which we have adduced, we think it plain that under the principles of international law that the boundary between these two States in this region should be fixed at the deep-water channel between the two States. The principles of international law have always been regarded and applied by this honorable court to boundary questions between the various States of the Union with as much force as international law is applied to States or nations foreign to each other, and as late as Kansas *vs.* Colorado, 185 U. S., 146, in deciding a question between those two States this honorable court said that, "Sitting as it were as an international, as well as a domestic tribunal, we apply Federal law, State law, and international law as the exigencies of the particular case demand." But, before quoting the commentators and decisions it will be well for us here to fix in advance the terminology of the various waters which will be mentioned in the international authorities. For instance the bodies of water adjoining the area in dispute herein are commonly known and called Lakes Borgne and Pontchartrain, taking the names of lakes from the French word "lac" which includes under that appellation estuaries or inlets of the sea, in this case, the gulf of Mexico, partly enclosed by

land as we will see in some of the quotations which we shall hereafter make.

Littré Dictionnaire de la Langue Française gives the definition of "lac" to be:

"Grand espace d'eau qui se trouve enclavé dans les terres."

But, in English such bodies of salt water would not be called lakes but estuaries, inlets or arms of the sea or gulf. Webster's International Dictionary defines "lake" to be "a large body of water contained in a depression of the earth's surface, and supplied from the drainage of a more or less extended surface." And the Century Dictionary and Encyclopedia defines "lake" to be "a body of water surrounded by land, *or not forming a part of the ocean* and occupying a depression below the ordinary drainage level of the region. Lakes are depressions or basins filled by streams flowing into them." (Italics are our own) "Inlet" is defined by Webster's International Dictionary to be "a bay or recess, as in the shore of a sea, lake, or a large river; a narrow strip of water running into the land or between islands." The Century Dictionary and Encyclopedia defines "inlet" to be "a water-way leading into a sea or a lake and forming part of it." This is also the definition in the English and American Encyclopedia of Law, volume 18, p. 130, taken from Black's Law Dictionary. "Sound" is defined by Webster's International Dictionary to be "a strait connecting two seas or connecting a sea or a lake with the ocean." The Century Dictionary and Encyclopedia gives "sound" as "a narrow passage of water, not a stream between the mainland and an isle, or a strait connecting two seas or connecting a sea and a lake, or connecting a sea or lake with the ocean." In 34 Louisiana's Annual, 838, the supreme court of Louisiana decided that Lake Pontchartrain, so called, is an arm of the sea.

The English and American Encyclopedia of Law, volume 2 (2d edition), p. 828, defines "arm of the sea:" "This

phrase designates a navigable body of water, where the tide flows and reflows, and so far only as the tide flows and reflows," and in notes 1 and 2 authorities are cited showing that "sounds" are arms of the sea.

Littré Dictionnaire de la Langue Française gives the definition of "arm of the sea" as follows:

8°. "Bras de mer" as "détroit, Ils sont separés par un bras de mer."

The meaning of the word "sea" in the treaty of peace of 1783, between the United States and Great Britain defining the boundaries of the United States, was given by the American claim, and acquiesced in by the British as follows: "The term 'sea' in its general sense embraced the whole body of salt waters. Its great subdivisions were designated by the names Atlantic ocean, Pacific ocean, etc. Each of them generically embraced all the bays, gulfs and inlets formed by the indentures of its shores or by adjacent islands." (Moore's International Arbitration, vol. 1, p. 102); and the bay of Fundy, the gulf of St. Lawrence and the bay of Chaleurs were considered parts of the sea (*ibid.*, pp. 114, 158, and note 3). Seashore has been frequently defined to be that portion of the land adjacent to the sea which is covered by the highest tides.

"Coast is defined to be the seaboard of a country" (Eng. and Am. Encyc. of Law, vol. 6, p. 171).

"In the Anna 5, C. Rob. (reprint 332, p. 373, orig.), on the question as to whether small mud islands at the mouth of the Mississippi, composed of earth and trees drifted down by the river, were part of the United States, Sir William Scott said, 'I think that the protection of territory is to be reckoned from these islands, and that they are the natural appendages of the coast on which they border and from which indeed they are formed."

And held the islands to be a part of the coast of the United States (Eng. and Am. Encyc. of Law, vol. 16 (2d edit.), p. 1131.) The Anna was captured on the outer side of one of these islands, which were estimated to be from two and a half to five miles from the mainland, and yet the islands were considered a part of the coast.

Mr. Justice Story in Thomas and Hatch, 3 Sumner, 178, defined "shore" to be the space between the margin of the water at a low stage, and the banks to be what it contains in its greatest flow; Lord Hale defined it as synonymous with flat; Mr. Justice Parker does the same in 6 Mass., 436, 439, and Chief Justice Marshall described the shore of a river as bordering on the water's edge. (See 23 Howard, 513, Alabama *vs.* Georgia.)

"Thalweg" a term now universally used by international law-writers to define water boundaries between States and nations, is a German word composed of two separate words, "thal," a valley, and "weg" way, meaning the middle or the deepest or most navigable channel. We have in English no one word which is its exact equivalent, but it is sometimes rendered as "fairway" or "midway" and "main channel."

Littre Dictionnarie de la Langue Française gives as a definition of canal—

"5me. Lit d'une riviere—Le fleuve offre partout un canal tranquille semblable a ces fluves qui se creussent un nouveau canal"

"6me. Reviere creusée du main d'homme."

Verbo "chénal 1er Passage practiqué dans une riviere ou a l'entrée du port. * * * Forme ancienne de canal."

Having given these preliminary definitions of the terms which we shall find used in the various extracts from the commentators or other authorities on international law which, we now propose to show, uniformly support

our contention, that the deepest navigable channel, or "thalweg" in sounds, bays or arms of the sea constitutes the boundary between riparian States and nations, we beg to refer to these authorities as follows:

Halleck's International Law, or Rules Regulating the Intercourse of States in Peace and War. A new edition, revised, with notes and cases, by Sir Sherston Baker, Bart., of Lincoln's Inn, barrister-at-law. London, 1878.

Vol. 1, chap. VI, p. 145.

No. 23. A river which flows, for its entire length, through the territory of a State, is regarded as forming part of its dominion, including the bays and estuaries formed by its junction with the sea. Where the entire portion of a navigable river is included within a single State, the part so enclosed is undoubtedly the property of such State. Where a navigable river forms the boundary of coterminous States, the middle of the channel—the *filum aquæ* or *thalweg*—is generally taken as the line of their separation, the presumption of law being, that the right of navigation is common to them both. But this presumption may be rebutted or destroyed by actual proof of the exclusive title of one of the riparian proprietors to the entire river. Such title may have been acquired by prior occupancy, purchase, cession, treaty, or any one of the modes by which other public territory may be acquired. But where the river not only separates the coterminous States, but also their territorial jurisdictions, the *thalweg*, or middle channel, forms the line of separation through the bays and estuaries through which the waters of the river flow into the sea. As a general rule, this line runs through the middle of the deepest channel, although it may divide the river and its estuaries into two very unequal parts. But the deeper channel may be less suited, or totally unfit, for the purposes of navigation, in

which case the dividing line would be the middle of the one which is best suited and ordinarily used for that object. The division of the islands in the river and its bays would follow the same rule.[1]

No. 24. Where the dividing line of two States is water, as a river or lake, which is subject to changes, important questions may arise respecting the rights of property. Thus, where, by a gradual and insensible movement, the water advances on one side and recedes on the other, or by detrition on one side and deposit on the other, a portion of the soil is gradually transferred, there is evidently a loss to one State and an increase to the other. So also, where islands are washed away on one side of the channel, and new ones formed on the other, there is a corresponding change of territory. Again, suppose that the river or lake which constitutes the boundary has suddenly changed its bed, will this change produce a corresponding increase or diminution of territory to the adjacent proprietors? The Roman law determined with great care the effect of changes in the distribution of waters upon the ownership of private lands; and the influence of this law is manifest in the rules adopted by publicists with respect to international property.[2]

No. 25. Where the moving of the dividing water is so gradual as to be almost insensible, the changes produced are

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[1] Gundling, *Jus Nat.*, p. 248; Wolfius, *Jus Gentium*, Nos. 106–107; Stypmannus, *Jus Marit.*, etc., cap. V, n. 476–552; Merlin, *Repertoire*, voc. "alluvium;" Rayneval, *Droit de la Nature*, tome I, p. 307; De Cussy, *Droit Maritime*, liv. I, tit. II, No. 57.

[2] Rayneval, *Inst. de Droit Nat.*, liv. II, ch. XI; Pothier, *Œuvres de*, tome X, pp. 87, 88; Voet, *ad Pandects*, tome I, pp. 606, 607; Heineccius, *Recitaciones*, lib. II, tit. 1, Nos. 356–369; *Las Siete Partidas*, part. III, tit. p. 101; Gomez, *Elementos*, lib. II, tit. IV, No. 3; *Febrero Mexicana*, tome I, p. 161; *Sala Mexicana*, tome II, p. 62; Justinian, *Inst.*, lib. II, tit. I, Nos. 20–24; De Camp's *Manuel des Prop. Riv.*, passim; Chardon, *Droit á Alluvion*, passim.

not considered as acquisitions and losses of property, but the natural consequences of property already existing; because, the thing owned is naturally susceptible of this physical increase or decrease. In such a case, whether the dividing water belongs entirely to one State, or the boundary is the middle or *thalweg*, each party gains or loses accordingly as the increase or decrease is upon its side. The same rule applies to the gradual removal or formation of islands in a river or lake which divides States, or in a sea, within the territorial limits or *ligne de respect* of a State bordering upon the ocean. Moreover, a State has a certain right of preëmption to islands formed adjacent to its coast, even outside of this line of respect. But the case is very different where the river abandons its ancient bed and forms a new channel, or where a lake leaves its former banks and forms a new lake, or a series of new lakes; the boundaries of the State remain in the abandoned bed of the river, or the position formerly occupied by the lake.[1]

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[1] Grotius, De Jur. Bel. ac. Pac., lib. vii, chap. iii, No. 17; Ortolan Dominie International, Nos. 85–93; Heffter, Droit International, No. 69, note; Gunther, Europ. Volkerrecht, t. ii, p. 57; Pestel, Commentarii de Repub. Batav., No. 268; Bowyer, Universal Public Law, ch. xxviii; Riquelma, Derecho Pub. Int., lib. i, tit. i, chap. iv; Bello, Derecho Internacional, pt. i, cap. iii; Pando, Derecho Internacional, p. 99; Almeda, Derecho Publico, tome i, p. 199; Cushing, Opinions U. S. Att'ys Gen'l, vol. viii, p. 175; Crittenden, Opinions U. S. Att'ys Gen'l vol. v. pp. 264, 412; Puffendorf, De Jur. Nat. et Gent., lib. iv, chap. v, No. 8; Wolfius, Jus Gentium, Nos. 108, 109; Proudhon et Dumay, Domaine Public, tome iv, ch. lvi, sec. 7.

Extracts from "First Steps in International Law," by Sir Sherston Baker, Bart., London, 1899.

"Navigable Rivers as Boundaries," p. 68, No. 23.

A river which flows, for its entire length through the territory of a State, is regarded as forming part of its dominion, including the bays and estuaries formed by its junction with the sea. Where the entire upper portion of a navigable river is included within a single State, the part so enclosed is undoubtedly the property of such State. Where a navigable river forms the boundary of conterminous States, the middle of the channel—the *filum aquæ*, or *thalweg*—is generally taken as the line of their separation, the presumption of law being, that the right of navigation is common to them both. But this presumption may be rebutted by proof of the exclusive title of one of the riparian proprietors to the entire river. Such title may have been acquired by prior occupancy, purchase, cession, treaty, or any one of the modes by which other public territory may be acquired. Where the river not only separates the conterminous States, but also their territorial jurisdictions, the *thalweg*, or middle channel, forms the line of separation through the bays and estuaries through which the waters of the river flow into the sea. As a general rule, this line runs through the middle of the deepest channel, although it may divide the river and its estuaries into two very unequal parts. But the deeper channel may be less suited, or totally unfit, for the purposes of navigation, in which case the dividing line would be in the middle of the one which is best suited and ordinarily used for that object. The division of the islands in the river, and its bays, would follow the same rule. A difference of opinion having for many years existed between Great Britain and the United States as to the meaning of the words "the middle of the channel," in the treaty of Washington of June 15, 1846, the matter was referred to the Emperor of Germany.

The treaty provided that the line of the boundary on the 49° parallel should be continued "westward along the said parallel of north latitude to the middle of the channel which separates the continent from Vancouver's island, and thence through the middle of the said channel and of Fuca straits to the Pacific ocean." In the middle of this channel lay the island of San Juan. Both countries contended for this island. The question was whether this channel should be run, as claimed by the British government, through the Rosario straits or through the canal of Haro, as claimed by the Government of the United States. The emperor gave his award in favor of the United States, October 21, 1872. But there is reason to believe that, had the fact of an existing third and middle channel dividing the group of islands been made part of the question, the emperor would have selected the middle channel.

Changes in Dividing Rivers and Lakes.

No. 24. Where the line of two States is water, as a river or lake, which is subject to changes, important questions may arise. Thus, where by a gradual and insensible movement, the water advances on one side and recedes on the other, or by detrition on one side and deposit on the other, a portion of the soil is gradually transferred, there is evidently a loss to one State, and an increase to the other. So, also, where islands are washed away on one side of the channel, and new ones formed on the other, there is a corresponding change of territory. Again, suppose that the river or lake which constitutes the boundary has suddenly changed its bed; will this change produce a corresponding increase or diminution of territory to the adjacent proprietors?

Effects on Boundaries.

No. 25. Where the moving of the dividing water is so gradual as to be almost insensible, the changes produced

are not considered as acquisitions and losses of property, but the natural consequences of property already existing; because the thing owned is naturally susceptible of this physical increase or decrease. In such a case, whether the dividing water belongs entirely to one State, or the boundary is the middle or *thalweg*, each party gains or loses accordingly as the increase or decrease is upon its side. The same rule applies to the gradual removal or formation of islands in a river or lake which divides States, or within the sea, within the territorial limits or *ligne de respect* of a State bordering upon the ocean. Moreover, a State has a certain right of preëmption to islands formed adjacent to its coast, even outside of this line of respect. But the case is very different where the river abandons its ancient bed and forms a new channel, or where a lake leaves its former banks and forms a new lake, or a series of new lakes; the boundaries of the State remain in the abandoned bed of the river, or in the position formerly occupied by the lake.

International Law: A Simple Statement of its Principles. By Herbert Wolcott Bowen. The Knickerbocker Press, G. P. Putnam's Sons, 1896.

29 (Page 10).

Filum Aquæ or *Thalweg*.

When nations are separated by water the middle of the channel (*filum aquæ* or *thalweg*) that is best adapted for navigation is the boundary line between them. In the absence of a superior channel, the middle of the stream is the boundary line, unless a larger title can be proved by one of the nations.

First Platform of International Law, by Sir Edward Shepherd Creasy, M. A., Professor of Jurisprudence in the Hon. The Four Inns of Court, Late Chief Justice of Ceylon, Emeritus Professor of History in University College, London; Sometime Fellow of King's College, Oxford. Printed at London, 1876.

Rule when a Navigable River is a Boundary, p. 221.

No. 230. "Where a navigable river forms the boundary of conterminous States, the middle of the (navigable) channel, the *thalweg*, is generally taken as the line of their separation, the presumption of law being that the right of navigation is common to them both.[1] But this presumption may be rebutted by actual proof of the exclusive title of one of the riparian proprietors to the entire river."[2] For, "a nation which has established itself upon one of the banks of a river prior to the occupation of the opposite bank by any other nation, may, with a view to its own security, reduce the channel of the river into possession without occupying the other bank. It may for this purpose either station an armed fleet upon its waters, and thereby occupy the fairway of the river, or it may erect armed forts upon its own bank and thereby command the fairway; and in either case it will be able effectively to exclude all other nations from the use of the river." That a nation which is settled on one only of the banks of a river may nevertheless have a right of empire over the entire river, is noticed by Grotius.[3] But though,

[1] Halleck, p. 138.

[2] Travers Twiss, p. 201.

[3] The original passage in Grotius is, "Quanquam res in dubio, ut diximus, imperia ad medietatem fluminis utrinque pertingunt, fieri tatem potuit, et contigisse alicubi videmus, ut flumen totum parti uni accederet, quia scilicet ripæ alterius imperium serius occupato jam flumine coepisset; aut quia eum in modum pactionibus esset definita." Lib. 2, c. iii, sect. 18.

as I have said in case of any "doubt, the jurisdiction on each side reach to the middle of the river that runs between them, yet it may be, and in some places it has actually happened, that the river belongs wholly to one party, either because the other nation had not yet possession of the other bank until later, when their neighbors were already in possession of the whole river, or else because matters were so stipulated by some treaty." The sanction, which Usucapion, or established possession, in such a case gives to the claim of a nation to exclude other nations from the use of a river, has not been overlooked by Vattel: "A long and undisputed possession establishes the right of a nation, otherwise there could be no peace, no stability between them; and notorious facts must be admitted to prove possession. Thus, when from time immemorial a nation has without contradiction exercised the sovereignty upon a river which forms its boundary, nobody can dispute with that nation the supreme dominion over it."[1]

The *Thalweg* and the *Medium Filum*.

No. 231. It has been stated that where a navigable river separates neighboring States, the *thalweg*, or middle of the navigable channel, forms the line of separation. Formerly a line drawn along the middle of the water, the *medium filum aquæ*, was regarded as the boundary line; and it will be regarded *prima facie* as the boundary line, except as to those parts of the river as to which it can be proved that the vessels which navigate those parts keep their course habitually along some channel different from the *medium filum*. When this is the case, the middle of the channel of traffic is now ordered to be the line of demarcation. Dr. Travers Twiss[2] on this subject quotes and agrees with Kluber:—"Pour ce qui est des fleuves et lacs frontieres, dont la rive opposee est

[1] Travers Twiss, p. 202.
[2] P. 206, citing Kluber "Droit des Gens," sect. 133.

également occupée, leur milieu, y compris les îles que traverse la ligne du milieu, separe ordinairement les territories. Au lieu de cette ligne on a nouvellement choisi pour frontiere le '*thalweg*' c'est-a-dire le chemin variable que prennent les bateliers quand ils sont aval, ou plutot le milieu de ce chemin." He goes on to observe that "Grotius and Vattel speak of *the middle of the river* as the line of demarcation between two jurisdictions, but the modern publicists and statesmen prefer the more accurate and more equitable boundary of the navigable *mid-channel*. If there be more than one channel of a river, the deepest channel is regarded as the navigable mid-channel for the purpose of territorial demarcation; and the boundary line will be the line drawn along the surface of the stream corresponding to the line of deepest depression of its bed.

The islands on either side of the mid-channel are regarded as appendages to either bank; and if they have once been taken possession of by the nation to whose bank they are appendant, a change in the mid-channel of the river will not operate to deprive the nation of its possession, although the water-frontier line will follow the change of the mid-channel."

Common Cause of Dispute when River Flows Through Other Territories.

No. 232. The chief disputes connected with rivers have arisen in cases where a navigable river, during part of its course, flows through the territory of a State, or forms its boundary, that river having passed or passing through the territory of some other state before it reaches the sea."

Pages 221–224, Inclusive.

The Law of Nations, Considered as Independent Political Communities by Sir Travers Twiss, D. C. L., Regius Professor of Civil Law in the University of Oxford and One of Her Majesty's Counsel. Printed at Oxford and London, 1869.

Territorial Seas Distinguished from Jurisdictional Waters.

Paragraph 2; section 174; page 251. Puffendorf,[1] to the same effect says, "that gulfs and channels or arms of the sea are, according to the regular course, supposed to belong to the people with whose lands they are encompassed." Whenever a nation has an exclusive right over an entire sea, or over a bay, or over straits, no other nation can claim a right of navigation therein against its will. But in case the opposite sides of a bay or strait are inhabited by different nations, each nation has a right to go to the central line, drawn at low-water mark, as the limit of its maritime territory.[2] But although the territorial limit of either nation for purposes of absolute jurisdiction may not extend beyond the central deep-water line, yet the right of *innocent use* of the entire bay or strait for the purposes of navigation or passage may be common to both nations. Such a right does not destroy the territorial jurisdiction of each nation as far as the middle of the stream, but it is in the nature of an *easement*, as it is called in English law, or a *servitude*, as it is termed in the Roman law.[3] It is in fact analogous to the right of *private way* over the land of another. The right of passage and navigation must exist as a common

[1] De Jure Belli et Pacis, L. 11, c. 3, No. 8; Law of Nature and of Nations, L. IV, c. 5, No. 8.

[2] Note 2, *ibid.*

[3] Note 3, Instit. 11, tit. 3. De Servitutibus. Hugo, historie de Droit Romain, t. 1, No. 202. Kluber.

right in all those cases, where such passage or navigation is ordinarily used by both nations, and is indispensable for their common access to their own shores. A river or bay may be so narrow, or so irregular, or so liable to difficulties from winds, waves and currents, that it cannot be navigated by either nation, without each having a right of passing over the whole waters at all times. If in such a case no exclusive right is recognized in either nation the constant use by both is a conclusive proof of a common right of passage and navigation in both.

A Treatise on International Law, by William Edward Hall, M. A. Fifth Edition. Edited by J. B. Atlay, M. A., of Lincoln's Inn, Barrister-at-law. Oxford and London. 1904.

Boundaries of State Territory, Page 122.

The boundaries of State territory may consist either in arbitrary lines drawn from one definite natural or artificial point to another, or they may be defined by such natural features of a country as rivers or ranges of hills. In the latter case more than one principle of demarcation is possible; certain general rules therefore have been accepted which provide for instances in which from the absence of express agreement or for other reasons there is doubt or ignorance as to the frontier which may justly be claimed. Where a boundary follows mountains or hills, the water divide constitutes the frontier. Where it follows a river, and it is not proved that either of the riparian States possesses a good title to the whole bed, their territories are separated by a line running down the middle, except where the stream is navigable, in which case the center of the deepest channel, or, as it is usually called, the thalweg, is taken as the boundary. In lakes, there being no necessary track of navigation,

the line of demarcation is drawn in the middle. When a State occupies the lands upon one side of a river or lake before those on the opposite bank have been appropriated by another power, it can establish property by occupation in the whole of the bordering waters, as its right to occupy is not limited by the rights of any other State; and as it must be supposed to wish to have all the advantages to be derived from sole possession, it is a presumption of law that occupation has taken place. If, on the other hand, opposite shores have been occupied at the same time, or if priority of occupation can be proved by neither of the riparian States, there is a presumption in favor of equal rights, and a State claiming to hold the entirety of a stream or lake must give evidence of its title, either by producing treaties, or by showing that it has exercised continuous ownership over the waters claimed. Upon whatever grounds property in the entirety of a stream or lake is established, would it seem in all cases to carry with it a right to the opposite bank as accessory to the use of the stream, and perhaps it even gives a right to a sufficient margin for defensive and revenue purposes, when the title is derived from occupation, or from a treaty of which the object is to mark out a political frontier. In 1648 Sweden, by receiving a cession of the River Oder from the empire under the treaty of Osnabruck, was held to have acquired territory to the exaggerated extent of two German miles from its bank as an inseparable accessory to the stream; and in the more recent case of the Netze in 1773 Prussia claimed with success that the cession of the stream should be interpreted to mean a cession of its shore. Where, however, the property in a river is vested by agreement in one of two riparian States for the purpose of bringing to an end disputes arising out of the use of its waters for mills and factories, as in the case of a treaty concluded in 1816 between Sardinia and the Republic of Geneva, by which the Foron was handed over to the latter,

it would be unreasonable to interpret a convention as granting more than is barely necessary for its object.[1]

Apart from questions connected with the extent of territorial waters, which will be dealt with later, certain physical peculiarities of coasts in various parts of the world, where land impinges on the sea in an unusual manner, require to be noticed as affecting the territorial boundary. Off the coast of Florida, among the Bahamas, along the

[1] Grotius, lib. ii, c. iii, No. 18; Wolff, Jus. Gentium, Nos. 106–107; Vattel, liv. i, ch. xxii, No. 266; De Martens, Precis, No. 39; the Twee Gebroeders, iii, Rob., 339–40; Bluntschli, Nos. 297–8, 301; Twiss, i., Nos. 143–4. An instance of property by occupation is afforded by the occupation of the River Paraguay between the territory of the Republic of Paraguay and the Gran Chaco, which was effected by the Republic, and maintained until after the war with Brazil and the Argentine Confederation.

Sir Travers Twiss points out with justice that the doctrine which regards the shore as attendant upon the river, when the latter is owned wholly by one power, might lead, if generally applied, to great complications; and indicates that when it is wished to keep the control of the river in the hands of one only of the riparian owners, it is better to make stipulations such as those contained with respect to the southern channel of the Danube in the treaty of Adrianople, than to allow the common law of the matter to operate. By that treaty it was agreed that the right bank of the Danube from the confluence of the Pruth to the St. George's mouth should continue to belong to Turkey, but that it should remain uninhabited for a distance inland of about six miles, and that no establishments of any kind should be formed within the best of land thus marked out. Stipulations of such severity could rarely be needed, and in most cases could not be carried out; but the end aimed at, viz., the prevention of any use of the borders of the river for offensive or defensive purposes, and of any interference with navigation, could be obtained by prohibiting the erection of forts within a certain distance of the banks, and if necessary by specifying the places to which highlands or railways might be brought down.

shores of Cuba, and in the Pacific, are to be found groups of numerous islands and islets rising out of vast banks, which are covered with very shoal water, and either form a line more or less parallel with land or compose systems of their own, in both cases enclosing considerable sheets of water, which are sometimes also shoal and sometimes relatively deep. The entrance to these interior bays or lagoons may be wide in breadth of surface water, but it is narrow in navigable water. To take a specific case, on the south coast of Cuba, the Archipielago de los Canarios stretches from sixty to eighty miles from the mainland to La Isla de Pinos; its length from the Jardines bank to Cape Frances is over a hundred miles. It is enclosed partly by some islands, mainly by banks, which are always awash, but upon which as the tides are very slight, the depth of water is at no time sufficient to permit of navigation. Spaces along these banks, many miles in length, are unbroken by a single inlet; the water is uninterrupted, but access to the interior gulf or sea is impossible. At the western end there is a strait, twenty miles or so in width, but not more than six miles of channel intervene between two banks, which rise to within seven or eight feet from the surface, and which do not consequently admit of the passage of sea-going vessels. In cases of this sort the question whether the interior waters are, or are not, lakes enclosed within the territory, must always depend upon the depths of the banks, and the width of the entrances. Each must be judged upon its own merits. But in the instance cited, there can be little doubt that the whole Archipielago de los Canarios is a mere salt-water lake, and that the boundary of the land of Cuba runs along the exterior edge of the banks.

"Programme d'un Cours de Droit des Gens pour servir a L'Etude privee et aux Lecons Universitaires, par Alphonse River, Professeur de Bruxelles." Printed at Paris and Bruxelles, 1889.

Section 14. Les Frontiers.

Page 46—2 Montagnes frontieres: ligne de faite. Rivieres: la frontiere peut etre sur l'une des rives (ci-dessus, section 13). Si elle est dans le lit de la riviere, c'est, d'apres les traites recents, generalement le *thalweg*, c'est-a-dire la ligne la plus profonde selon laquelle se dirige le fil de l'eau. Changement de lit; ile, pont. Frontieres dans les lacs, dans la mer.

Translation.

Section 14. The Frontiers.

Page 46. 2 frontier mountains; actual line. Rivers; the frontier can be on one of the banks (as below in section 13). If it is in the bed of the river, it is according to recent treaties, generally the *thalweg*, that is to say the deepest line according to which the thread of the water directs itself. Change of the bed; island bridge. Frontiers in the lakes, in the sea.

De Marteus, Droit des Gens., tom. 1, (2eme edit.) No. 39, p. 134, lays down the rule that where ordinary unnavigable rivers form the boundary between two States, "que chacune des deux nations est maîtresse de la rivière et des îles qui s'y trouvent jusqu' au milieu de la rivière * * * Dans les fleuves navigables, c'est le courant du fleuve qu'on a communement en vue, en convenant de prendre le milieu pour limite." Thus adopting the channel theory, or fixing the boundary line "*usque ad filum.*" In section No. 40, p. 141, under the heading of "Des Détroits de Mer, des Golfes,

et de la Mer voisine" the same author says "Ce qui vient d'être dit des rivières et des lacs est également applicable aux détroits de mer et aux golfes, surtout en tant que ceux-ci ne passent pas la largeur ordinaire des rivières, ou la double portée du canon" and he cites in the foot-note (*b*) Pfeffel Principes du Droit Naturel liv. III, chap. IV, § 15; Pestel Selecta Capita Juris gentium maritimi. § 9; Gunther L.V.R. 1, II, p. 38 et suiv.

Translation.

"That each of the two nations is mistress of the river and the islands which are situated in the middle of the river. * * * In navigable rivers it is the current of the river which is commonly had in view in agreeing to take the middle for the boundary." * * * "What we have just said in regard to rivers and lakes is equally applicable to the straits or gulfs of the sea, especially those which do not exceed the ordinary width of rivers or double the distance that a cannon can carry."

Lorsqu'une rivière forme la limite, et qu'elle n'est pas devenue propriété exclusive d'un des états riverains, on admêt dans la doute que la frontière passe par le milieu de la rivière.

Le thalwege des rivières navigables est dans le doute regarde comme le milieu" & in the note "le mot allemand *thalweg* est même devenu français depuis le traité de Lunéville, 9 fevrier, 1801, art. III" and further "aussi preférе-t-on depuis quelques années prendre pour la ligne de démarcation dans les rivières navigables le chemin (thalweg) suivi par les bateaux qui descendent le courant" Bluntschli, Le Droit International Codifie, cinquième edition, 1895. §§ 298, 299, pp. 184, 185.

Translation.

"When a river forms the boundary, and has not become the exclusive property of one of the riparian States, it is admitted in the doubt that the frontier is in the middle of the river. The thalweg of navigable rivers is in case of doubt regarded as the middle. * * * The German word 'thalweg' has even become French since the treaty of Luneville, the 9th of February, 1801, article III. * * * It has been also preferred since many years to take for the line of demarcation in navigable rivers the road (thalweg) followed by the boats which descend the current." * * *

The same author says in § 301, p. 185, "Le milieu d'un lac sert également de ligne de démarcation entre les deux états riverains, a moins qu'une autre limite n'ait été consacrée par l'usage ou par les traités. On reconnait dans la règle aux habitants des deux rives le droit de libre navigation. 1. On doit prendre ici pour ligne frontière le milieu du lac, parcequ'il n'y a pas ou presque pas de thalweg des lacs" plainly conveying the intimation that where there is a main channel or thalweg, the center of it is the boundary line. And again the same author says in § 316, p. 194, "Les lacs font partie du territoire de l'état qui les entoure. Lorsqu'ils sont situés entre plusieurs états; ils sont traités par analogie, comme les fleuves et les rivières."

"The middle of a lake serves equally as the line of demarcation, as between two riparian States, at least when no other line has been consecrated by usage or treaties. The rule is recognized to allow the inhabitants of both banks the right of free navigation. 1. We must take here for the boundary line the middle of the lake because there is not or generally not any thalweg in the lakes. * * * Lakes are a part of the territory of the State which encloses them. When they are situated between several States they are treated by analogy as streams and rivers."

P. Pradier Fodéré, in his "Traité de Droit International Européen et Américain, suivant les progrès de la Science et de la Pratique Contemporaines," 1885, one of the most modern and exhaustive works on international law, in seven volumes, says in section 657, tome 2eme, p. 202: "*d. Les lacs formés dans le voisinage immédiat de la haute mer*—Si l'eau maritime qui baigne les côtes est censée appartenir aux États riverains, il en est plus forte raison de même pour les eaux de mer qui sont en deça des côtes, c'est à dire pour les lacs formés dans le voisinage immédiat de la mer libre. Ces lacs doivent être considérés comme appartenant à l'État ou aux États dans le territoire desquels ils se trouvent, aux mêmes conditions que les mers fermées ou reputées telles (V. *supra* Nos. 641, 642, 643, 645, 646); *et comme ils sont generalement en communication avec la mer on doit les soumettre aux mêmes règles que les fleuves internationaux.* (V. *infra* 690 *et suiv.*, 699 *et suiv.*)" (The italics are our own.)

Translation.

"THE LAKES FORMED IN THE IMMEDIATE NEIGHBORHOOD OF THE HIGH SEA.—If the maritime water which bays the coast is considered to belong to the riparian States there is still greater reason that the waters of the sea which touch the coast should be the same, that is to say, if the lakes form in the immediate neighborhood of the sea. These lakes ought to be considered as belonging to the State or to the States in whose territory they lie, under the same conditions that the enclosed seas are all reputed as such, *and as they are generally in communication with or connected with the sea they ought to be considered under the same rules as international rivers.*" (The italics are our own.) * * *

Referring to these sections 690, 699, *et seq.*, the author collates all the authorities on the subject of boundaries on rivers between States, at too great length to be quoted in full here, but we condense from his text the following: Under the older

authors such as Grotius and Vattel the delimitation extended to the middle of the stream, and with them is the more modern author G. F. de Martens, who, however, fixes the line in navigable rivers at the channel; he quotes Kluber as at first favoring the middle of the stream as the line, but he adds: "Cependant il (Kluber) annonce qu'au lieu de cette ligne on à récemment choisi pour frontière le thalwoge, c'est à dire le chemin (variable) que prennent les bateaux quand ils descendent le fleuve, ou plûtôt le milieu de ce chemin" (V. *infra* No. 639). Our author further says: "Heffter dit que 'Si un fleuve sépare deux États, l'empire de l'un et de l'autre s'étend juste au milieu du fleuve, sauf convention contraire,' mais il ajoute, néanmoins que" quelquefois le chénal dit thalweg, a servi de limite (V. *infra* 693.)

Translation.

"Nevertheless he (Kluber) announces that in lieu of this line the thalweg has been recently chosen as the frontier, that is to say, the road (variable) that the vessels take when they descend the river, or rather the middle of this road." * * * Heffter says that if a river separates two States, the dominion of one and the other extends to the middle of the river unless there be a convention to the contrary, but he adds, nevertheless, that sometimes the channel, called the thalweg, has served as the boundary.

The author also quotes Bluntschli as laying down the middle of the river as the boundary line, but neglects to quote, as we have already done, the qualifying phrase of Bluntschli: "Aussi prefóre-t-on depuis quelques annees prendre pour la ligne de demarcation dans les rivières navigables le chemin (thalweg) suivi par les bateaux qui descendent le courant." P. Pradier Fodéré quotes Wheaton and Calvo as advocating the middle of the stream as the proper boundary. In sections 692, 693, 694 he sustains the thalweg or channel theory, as being the most natural, just

and reasonable, and as the one now most generally and universally adopted by civilized nations, instancing France, Germany, Russia, Prussia, Austria, Italy, Great Britain, Bavaria, all of which countries have in their treaties, and some in their congresses, recognized the thalweg or middle of the channel as the proper boundary. In section 695, page 230, he explains that "la limite indiquée par le thalweg c'est a dire le milieu du chénal" does not follow mathematically always the middle in all the variations of the channel, but says: "L'on se contente d'ordinaire d'observer la course des bateaux de plus fort tonnage, et on l'indique au moyen de signaux fixes et de boúées, ces jalons permettant de tracer graphiquement la ligne médiane avec une exactitude suffisante" and he cites in note 2, 1879, chap. II, p. 74, Engelhardt-Du régime conventionel des fleuves internationales.

Translation.

"Also it has been preferred since several years to take for the line of demarcation in navigable rivers the road (thalweg) followed by the boats which descend the current." * * * "It is considered sufficient ordinarily to observe the course of vessels of the heaviest tonnage and to indicate by means of fixed signs and buoys, the channel; these marks permitting to graphically trace the middle line with sufficient exactness.

It will thus be seen that according to the writers of international law the deep-water channel or thalweg theory is now almost universally adopted in regard to boundaries on water parts of the sea or gulf, whether they be sounds, bays, straits, gulfs, estuaries, or other arms of the sea, with the same force and applicability as to interior rivers, streams or lakes. Of course, there are but few judicial decisions, that is to say, decisions of the courts upon this point, because it is seldom, if ever, that such cases come up before the courts of any country, but the same principle has been fre-

quently maintained in treaties between foreign nations, as well as by arbitration tribunals, which are, of course, in a manner a very high order of judicial tribunals. However, there is one case in which this honorable court selected the channel or midway of the bay between New York and New Jersey as the proper boundary.

In Devoe Manufacturing Company, 108 U. S., 401, the question was at issue in regard to the boundary line between New York and New Jersey, under an agreement between the two States, the case coming up on an application for a writ of prohibition. The jurisdiction of the State of New Jersey was claimed, on the interpretation of the agreement to the boundary line, to extend "down to the bay of New York, and to the channel or midway of the said bay," and the court sustained the claim, and denied the application for the writ.

We have already seen that the thalweg theory or deep-channel theory was adopted in the French treaty of Luneville in the year 1801, and subsequently early in the century the King of the Netherlands, as arbitrator between the United States and Great Britain, in establishing the north-eastern boundary between the United States and Canada, 1831, adopted the "thalweg" in regard to the rivers and the bay of Fundy, as the true boundary line, under international law. (See p. 12, Translation Northeastern Boundary Arbitration, Washington, printed at the office of the United States *Telegraph*, to be found in Congressional Library.) The translator in a note says "Thalweg—a German compound word—thal, valley—weg, way. It means here the deepest channel of the river."

So in what is commonly known as "the San Juan water boundary" a controversy in regard to the boundary between the United States and Great Britain, Emperor William I of Germany, the chosen arbitrator, gave the award in favor of the United States, at Berlin, October 21, 1871, by deciding "that the boundary line between the territories of Her

Britannic Majesty and the United States should be drawn through the Haro channel." The emperor, arbitrator, in his award says that he has arrived at his decision "after hearing the report made to us by the experts and jurists summoned by us upon the interchanged memorials and their appendices." This sustained the American claim and the British immediately withdrew their military garrison from the island of San Juan, which was south of the Haro channel and the United States took possession.

It also gave to the Americans, as said by President Grant in his message of December 2, 1892, "the important archipelago of islands lying between the continent and Vancouver's island." Although in the emperor arbitrator's award there is no mention, *eo nomine* of the thalweg, yet it is plainly seen that the decision is based on the deep-channel theory as applicable to arms and sounds of the sea, such as the straits of San Juan de Fuca and the Haro channel, and in the subsequent definition of the boundary signed by Hamilton Fish, U. S. Secretary of State, Edward Thornton, British Minister, and James C. Prevost, British representative, the boundary line is said to be prolonged until "*it reaches the center of the fairway of the straits of San Juan de Fuca*"—fairway being the nearest English equivalent to thalweg. The "experts and jurists" mentioned by the Emperor William as those on whose reports he relied and based his decision were according to Prof. John Basset Moore three in number, viz: "Dr. Grimm, vice-president of the supreme ecart at Berlin; Dr. Kiepert, the eminent pupil of Carl Ritter; and Dr. Goldschmidt, the member of the supreme commercial court at Leipsic;" International Arbitrations by Prof. John Basset Moore, vol. I, p. 229, where this arbitration case is very fully treated. We regret that we have been unable to obtain the reports and opinions of these eminent German juri-consults so as to lay them before your honors, as we doubt not that they evidence the profound and exhaustive study of the subject, which charac-

terizes German scientists, especially German jurists. Senator Foster of Louisiana kindly made application to the United States Secretary of State to ask the gracious offices of our minister at Berlin to obtain copies of these reports, and although the request was properly and promptly made, the German government declined, as we have since been informed, is its usual practice, to furnish copies, although we offered to defray all expenses and fees.

Another case in which the "thalweg" was adopted as the boundary line was the arbitration case between Roumania and Bulgaria. By the treaty of Paris, 1858, at the Congress of Powers, the navigation of the Danube river was placed under the control of an international commission, and in 1878 by the treaty of Berlin the powers of that commission were much enlarged. Under the second article of that treaty, a commission was instituted to fix the boundaries of Roumania and Bulgaria. This commission consisted of seven members, one named by the Emperor of Germany, one by the Emperor of Russia, one by the President of the French Republic, one by the Queen of Great Britain, one by the King of Italy; one by the Sultan of Turkey; and one by the Emperor of Austria. This commission, unanimously, on the 17th of December, 1878, at Constantinople, fixed the southern boundary of Roumania and the northern boundary of Bulgaria as the "thalweg" of the River Danube (*vide* State Papers, vol. 70, 1878, 1879, pp. 514 *et seq.*). Although the Russian commissioner did not sign the award when made, he gave his adhesion to it in a note August 16–28, 1880—note, p. 514.

So, in the "Treaty between the Argentine Republic and Chile, defining the boundaries between the two countries (Tierra del Fuego, neutrality of straits of Magellan, etc.), signed at Buenos Ayres, July 23, 1881. Ratifications exchanged at Santiago, October 22, 1881, translation," the plenipotentiaries of the two powers, although not designating the channel boundary as the "thalweg," yet adopted the

deep-water channel as the boundary, and thereby fixed the nationality of the islands on either side of it. They divided Tierra del Fuego, giving the western portion to Chile, and the eastern portion to the Argentine Republic, and in article II said "in regard to the other islands, Isla de los Estados belongs to the Argentine Republic" (this island lies off in the Atlantic opposite and adjacent to the eastern portion of Tierra del Fuego), "with the isles next to it, and the other islands in the Atlantic and east of Tierra del Fuego, and the coast of Patagonia; while to Chile belong all the islands south of Beagle channel, down to Cape Horn, and those west of Tierra del Fuego" (*vide* State Papers, vol. 72, 1880, 1881, pp. 1103 *et seq.*). The maps of this territory show that Beagle channel is a part of the waterway running between the Atlantic and Pacific, and it will thus be seen that the thalweg or channel theory was adopted, and the ownership of the islands determined according to whether they were east or west of that channel; those west going to Chile and those east to the Argentine Republic.

The commissioners on the part of the United States and Great Britain, Porter, for the United States, and Barclay, for Great Britain, fixed the boundary in the so-called Detroit river, under the sixth and seventh articles of the treaty of Ghent at the deep-water channel (thalweg), giving Hog island, or Belle Isle, to the Americans, as lying south of the channel. See Gannett's Boundaries (3d edit., pp. 12 *et seq.*, report dated 18th of June, 1822), and see map N–III photo-lithographic copies of original charts in State Department, by the U.S. Light House Board, November, 1891. We have said the "so-called Detroit river," because the English name of river is a misnomer, as the body of water is not a river, but a strait between two lakes and properly called by the French "D'etroit," that is a "strait."

That this deep-water channel or thalweg has been generally held to be the true boundary between Louisiana and Mississippi by citizens of both States we have already shown

by evidence of witnesses and Mr. Hodgkins of the Coast and Geodetic Survey in his report on the boundary question between Louisiana and Mississippi, says, in regard to the cartographers and others that "there seems to have been a general consensus that the passage called Cat Island channel divides the jurisdiction of the two States" (Record, p. 1001). He also says on page 1003:

"It is also worth noticing that the principal channel into Lake Borgne lies to the northward of the islands between them and Lower Point Clear. From all the information at hand, therefore, it would appear that the boundary between the States probably takes the course indicated on the final tracing, *i. e.*, north of the Malheureux islands, and thence through the Cat Island channel to the gulf of Mexico."

In the Alaskan boundary case, which was decided by an arbitration tribunal, consisting of "six impartial jurists," namely, Baron Alverstone, Lord Chief Justice of England; Mr. Elihu Root, present Secretary of State and ex-Secretary of War of the United States; Henry Cabot Lodge, U. S. Senator from Massachusetts; George Turner, U. S. Senator from Washington; Sir Louis Amable Jette, K. M. G., lieutenant governor of the province of Quebec, and Allen Bristol Aylesworth, one of His Majesty's counsel, the award by the majority of the commission including the three American representatives, joined with Baron Alverstone, Lord Chief Justice of England, decided that the middle of the Portland channel was the proper boundary line, and included Wales island, to the north of which the channel passed. This award was made October 20, 1903 (*vide* Foreign Relations of the United States, 1903, pages 544 and 545). This sustained the American construction in regard to the "thalweg" and the island lying south of it.

In concluding upon this question of the application of the "thalweg" we cannot more forcibly state its applicability than by quoting what our distinguished opponent here, Dr.

Hannis Taylor, said in his argument before the Alaskan boundary commission when he said—"What I claim that I have demonstrated beyond all question to this tribunal is that the boundary set by that treaty between these two nations was that estuary, that arm of the sea which is one unbroken whole, a fjord, a canal, which had in it two channels, and that there was no kind of designation or inscription intended to indicate which one of the subordinate divisions, which one of the channels of the indivisible whole was intended as the boundary. Therefore, I say that no case has ever arisen between nations where there was a more ideal basis, a more perfect predicate upon which to apply the doctrine of the thalweg, to discriminate by operation of law which one of the two channels is the real boundary, when the body of water as a totality and an indivisible whole was set up as the boundary." The learned doctor then goes on to quote from Sir Travers Twiss, Bluntschli, Hall, Wheaton, and David Dudley Field, giving the following quotation from David Dudley Field's International Code—"*Boundary by stream of channel 30.*—The limits of national territory bounded by a river or other stream, or by a strait, sound, or arm of the sea, the other shore of which is the territory of another nation, extend outward to a point equidistant from the territory of the nation occupying the opposite shore; or if there be a stream or navigable channel, to the thread of the stream, that is to say, to the mid-channel; or, if there be several channels, to the middle of the principal one." Dr. Taylor adds in relation to this quotation—"That is the clean-cut, definite statement of David Dudley Field as to an arm of the sea that is a boundary between two countries, and he rests his statement upon the authority of Bluntschli."

If this be good international law, as contended by Dr. Taylor, as between the United States and England in interpreting the treaty between Russia and England, where it became necessary to interpret the meaning of the latter treaty, then the same rule would be applicable to the interpretation of

the boundary in this case between Louisiana and Mississippi, where there is any doubt as to the boundaries in the acts of Congress, according to the general principles of international law. It would thus appear that according to Dr. Taylor, himself one of the opposing counsel in the present cause, that he at least and his side would be hoisted by his own petard, and we would respectfully refer this honorable court to his argument in full on this particular topic, to be found at pages 535 *et seq.* of the record of the Alaskan boundary tribunal for the 13th day, Wednesday, September 30, 1903.

III.

Louisiana's title to the disputed territory confirmed by prescription, usucaption, acquiesence, and specific acknowledgment by the State of Mississippi.

First. There is a mass of evidence in the record showing that the State of Louisiana has uniformly acted in relation to the disputed territory as though it were hers; that she has asserted title thereto, and has exercised acts of ownership and sovereignty over same.

Second. There is a mass of evidence in the record showing that the various departments of the United States Government have in their interpretations of the acts of Congress, creating respectively the States of Louisiana and Mississippi, recognized and affirmed Louisiana's ownership of the disputed area.

Third. Finally there is a mass of evidence in the record showing that the State of Mississippi has never asserted title to the area, when she should have done so, if she had any claim; and that she has, by her official maps, recognized Louisiana's ownership of the disputed area.

We shall therefore consider the evidence under these subheadings and in doing so we will consider first what Louisiana has actively and affirmatively done in regard to her ownership of the disputed territory.

First.

Recognition by Louisiana of the deep-water channel as her boundary in the disputed territory, and her long, continuous, and undisputed acts of ownership and exercise of sovereignty over said area.

This is, after the United States statutory provisions on the subject of the boundary of the States of Louisiana and Mississippi, the next most important phase of this case, because the State of Mississippi after acquiescing for nearly one hundred years in Louisiana's ownership of the disputed territory will not now be permitted to set up a claim to the territory because she has become aware of its value.

As we have previously stated the disputed territory consists of land and water, and is bounded on the north by the deep-water channel. The land has not much value, being low-lying, tide-level sea marsh, valued at twenty-five cents an acre, while the waters really present the cause of dispute on account of their oyster-producing qualities. Jurisdiction of, and sovereignty over, the land carries with it, under international law, jurisdiction and control of the surrounding waters. The extension of the eighteen miles, or six-league line, of Mississippi projects her claim a great distance down into the Louisiana mainland, or St. Bernard peninsula, as will be seen by referring to the red-ink line on Mississippi's map "A" (Record, p. 88). The claim of Mississippi would also include the land forming Half Moon or Grand island, Grassy island, Malheureux island and Isle à Pitre, which islands are all, in a way, north of the Louisiana main shore line, but are south of the deep-water channel.

When Louisiana was to be created a State, by the enabling act of Congress, February 20, 1811, section 3, of the said act, provided that all of the waste and unappropriated land in said State should be and remain the property of the United States Government (Record, p. 1019, document No. 21). The National Government for many years had these public lands of Louisiana in course of being surveyed. The disputed area of today includes lands and waters located in the following townships in the southeastern land district of Louisiana, east of the Mississippi river, to wit:

Township 10 south, range 17 east; township 10 south, range 18 east.

Township 11 south, range 17 east; township 11 south, range 18 east.

Township 10 south, range 20 east; township 11 south, range 19 east.

Township 11 south, range 20 east; township 12 south, range 16 east.

Township 12 south, range 17 east; township 12 south, range 18 east.

Township 12 south, range 19 east; township 12 south, range 20 east.

Township 13 south, range 16 east; township 13 south, range 17 east.

Township 13 south, range 18 east; township 13 south, range 19 east.

Township 13 south, range 20 east.

Record, p. 730, testimony of Mr. H. C. Smith.

The lands in these townships were surveyed by surveyors in the employ of the United States Government, the surveys being made about the year 1842, and all of these lands were surveyed as being in, and forming part of, the State of Louisiana. This data is all given in photolithographic plats of the township surveys appearing in the record as:

Document No. 7, Record, p. 994.
Document No. 38, Record, pp. 1046–1047*h*—45.
Document No. 39, Record, p. 1047*i*—46.
Document No. 40, Record, p. 1047*j*—47.
Document No. 41, Record, p. 1047*k*—48.
Document No. 42, Record, p. 1047*l*—49.
Document No. 43, Record, p. 1047*m*—50.
Document No. 44, Record, p. 1047*a*—38.
Document No. 45, Record, p. 1047*b*—39.
Document No. 46, Record, p. 1047*c*—40.
Document No. 47, Record, p. 1047*d*—41.
Document No. 48, Record, p. 1047*e*—42.
Document No. 49, Record, p. 1047*f*—43.
Document No. 50, Record, p. 1047*g*—44.

It will be recalled that by the acts of Congress of the United States of 1849 and 1850, called the swamp-land grants, the United States authorized the return to certain States of the swamp and overflowed lands within their respective limits, in order that these lands might be reclaimed, protected from overflow and brought into use. Acting under authority of these acts, which provided that the respective States should make application for the lands to the Commissioner of the General Land Office of the United States, the State of Louisiana made application to the United States Government for the approval to her of these lands south of the deep-water channel as being part of her territory and situated within her limits. All of these lands selected by Louisiana and lying south of the deep-water channel were approved to the State of Louisiana May 6, 1852, and thereafter the private title thereto and absolute ownership thereof was vested in the State of Louisiana. All of these facts are shown by certified extracts from the books of the United States land office at New Orleans, Louisiana, where these transfers were recorded (Record, pp. 27 to 46, both inclusive, Exhibit G). It is also shown by certified copies of the lists of swamp and overflowed lands, unfit for cultivation, se-

lected as surveyed and approved to the State of Louisiana, appearing in the record as documents Nos. 62 and 63 (Record, pp. 1091 to 1103, inclusive).

These lands *in the disputed territory* were then by the State of Louisiana offered for sale through her register of her State land office, and sales of same were from time to time made by the State of Louisiana to individuals as shown by the following extracts from document No. 64, being an abstract of entries from the tract books of the land register of the State of Louisiana (Record, pp. 1105 to 1115, both inclusive) and from the patents issued to these lands by the State of Louisiana, to wit:

January 12, 1853.—Mary C. Gordon, certificate No. 449. Lands in township 13 south, range 16 east (Record, p. 1111, and also Record, p. 1149, document No. 74) patent No. 726.

July 5, 1854.—W. A. Gordon, certificate No. 772 N. S. Lands in township 13 south, range 16 east (Record, pp. 1111 and 1150, document No. 75), being patent No. 7850.

July 24, 1854.—Bernard Bermudez, certificate No. 801 N. S. Lands in township 13 south, range 16 east (Record, p. 1111).

April 28, 1859.—Mrs. Ann Gordon, certificate No. 5696 N. S. H. Lands in township 12 south, range 18 east (Record, p. 1108).

November 18, 1859.—Henry Florence, certificate No. 7785 N. S. H. Lands in township 11 south, range 18 east (Record, p. 1105).

February 28, 1861.—Louis Palms, certificate No. 10350 N. S. H. Lands in township 13 south, range 16 east (Record, p. 1111).

May 30, 1861.—Louis Palms, certificate No. 3485. Lands in township 13 south, range 16 east (Record, p. 1111), and patent No. 10331 (Record, p. 1151, document No. 76).

November 25, 1854.—A. W. Morse, certificate No. 52 N. S. G. Lands in township 13 south, range 17 east (Record, p. 1112), patent No. 143 (Record, p. 1153, document No. 78).

November 29, 1864.—F. M. Stevens, certificate No. 55 N. S. G. Lands in township 13 south, range 17 east (Record, p. 1112), patent No. 144 (Record, p. 1152, document No. 77).

January 7, 1865.—Berturano Plongas, certificate No. 92 N. S. G. Lands in township 13 south, range 17 east (Record, p. 1112).

January 9, 1865.—Henry McGuinn, certificate No. 106 N. S. G. Lands in township 13 south, range 17 east (Record, p. 1112), patent No. 1176 (Record, p. 1154, document No. 79).

March 20, 1867.—Richard Pindall, patent No. 194. Lands in township 10 south, range 20 east (Record, p. 47, Exhibit "H").

March 20, 1867.—Richard Pindall, patent No. 195. Lands in township 10 south, range 20 east (Record, p. 48, Exhibit "I").

March 20, 1867.—Richard Pindall, patent No. 196. Lands in township 10 south, range 20 east (Record, p. 49, Exhibit "J").

March 20, 1867.—Richard Pindall, patent No. 193. Lands in township 14 south, range 16 east (Record, p. 1155, document No. 80).

August 28, 1869.—Annie Duncan, certificate No. 358 N. S. D. Lands in township 13 south, range 17 east (Record, p. 1112).

August 28, 1869.—Alexander Duncan, certificate No. 359 N. S. D. Lands in township 13 south, range 17 east (Record, p. 1112).

August 22, 1873.—Stephen Moloche, certificate No. 1288 N. S. D. Lands in township 13 south, range 16 east (Record, p. 1110).

March 15, 1887.—J. C. Gilmore, certificate No. 571 N. S. L. Lands in township 11 south, range 20 east (Record, p. 1106), patent No. 706 (Record, p. 1156, document No. 81).

April 7, 1887.—J. C. Gilmore, certificate No. 595 N. S. L. Lands in township 12 south, range 20 east (Record, p. 1109), patent No. 751 (Record, p. 1158, document No. 83).

April 7, 1887.—J. C. Gilmore, certificate No. 594 N. S. L. Lands in township 11 south, range 20 east (Record, p. 1106), patent No. 750 (Record, p. 1157, document No. 82).

April 11, 1887.—W. V. Gilmore, certificate No. 601 N. S. L. Lands in township 11 south, range 20 east (Record, p. 1106), patent No. 761 (Record, p. 1159, document No. 84).

June 11, 1887.—W. V. Gilmore, certificate No. 659, N. S. L. Lands in township 11 south, range 20 east (Record, p. 1106), patent No. 870 (Record, p. 1161, document No. 85).

September 12, 1887.—Samuel L. Gilmore, certificate No. 719 N. S. L. Lands in township 12 south, range 20 east (Record, p. 1110), patent No. 961 (Record, p. 1162, document No. 86).

November 7, 1887.—J. C. Gilmore, certificate No. 770 N. S. L. Lands in township 11 south, range 19 east (Record, p. 1105), patent No. 1039 (Record, p. 1163, document No. 87).

November 7, 1887.—J. C. Gilmore, certificate No. 769 N. S. L. Lands in township 11 south, range 20 east (Record, p. 1106), patent No. 1038 (Record, p. 64, document No. 88).

November 7 1887.—J. C. Gilmore, certificate No. 771 N. S. L. Lands in township 12 south, range 20 east (Record, p. 1110), patent No. 1040 (Record, p 1165, document No. 89).

April 27, 1894.—S. Moloche, certificate No. 2805 N. S. L. Lands in township 11 south, range 19 east (Record, p. 1106), patent No. 5094 (Record, p. 1050, document No. 53).

April 27, 1894.—S. Moloche, certificate No. 2806 N. S. L. Lands in township 11 south, range 20 east (Record, p. 1107), patent No. 5095 (Record, p. 1051, document No. 54).

April 27, 1894.—J. C. Gilmore, certificate No. 2804. Lands in township 11 south, range 20 east (Record, p. 1106), patent No. 5093 (Record, p. 1049, document No. 52).

In furtherance of the object of better protecting the lands of the parishes of St. Bernard and Plaquemines from the overflow by the annual high waters of the Mississippi river, as contemplated by the swamp land grant acts of Congress,

the legislature of the State of Louisiana adopted act No. 14 of 1892, which created the Lake Borgne Basin levee district, and provided a board of commissioners therefor as a department of the State government. This board of commissioners was authorized to levy taxes on the property within the limits of its district, which taxes were to be used in establishing a protective levee system for the district to prevent annual overflows. The act also provided that as a means of raising further revenues to better enable the board of commissioners to discharge its duties, the register of the State land office was authorized to transfer and deed to the board of commissioners for the Lake Borgne Basin levee district, all of the unsold lands belonging to the State of Louisiana, lying within the limits of the levee district. The limits of this levee district included the whole of the parish of St. Bernard and a portion of the parish of Plaquemines. This deed was executed April 2, 1895, and a certified copy appears in the record as document No. 55 (Record, pp. 1052 to 1081). It transferred from the State of Louisiana to the said levee board, as a special department of the State government, three hundred and eighty-four thousand nine hundred and forty-one and 17/100 acres of State lands in the parish of St. Bernard. Of the lands in the parish of St. Bernard involved in and forming part of the area now in dispute with the State of Mississippi, there were transferred lands in the following townships, to-wit:

Township 11 south, range 17 east.....	8,960	acres.
Township 11 south, range 18 east..... ..	4,920	"
Township 11 south, range 17 east..... ..	12,160	"
Township 11 south, range 20 east.....	4,360	"
Township 12 south, range 16 east.....	7,040	"
Township 12 south, range 17 east.....	21,120	"
Township 12 south, range 18 east.....	19,611.40	"
Township 12 south, range 19 east.....	21,120	"
Township 12 south, range 20 east.....	12,120	"
Township 12 south, range 21 east.....	640	"

Township 13 south, range 16 east.....	11,134.36	acres.
Township 13 south, range 17 east.....	20,760	"
Township 13 south, range 18 east.....	22,400	"
Township 13 south, range 19 east.....	20,480	"
Township 13 south, range 20 east.....	15,360	"
Total.....	201,985.76	

This transfer was supposed to convey to the said levee board all of the State lands in the parish of St. Bernard, and included all of the unsold land in the disputed territory, except as omissions might be developed and corrected. When this land was transferred by the State to the Lake Borgne Basin levee district, an entry was made by the register of the State land office in his tract book as appears from document No. 64 (Record, pp. 1105 to 1115).

The board of commissioners for the Lake Borgne Basin levee district, which was nothing more or less than a department of the State government of the State of Louisiana, as we have stated, created for a special purpose, having these lands on hand was authorized by law to sell same, and did make sales thereof to individuals as follows:

September 16, 1898.—To Chas. Sanger of Bay St. Louis, Mississippi, 4,320 acres in township 11 south, range 19 east, parish of St. Bernard (Record, p. 1083, document No. 57).

June 17, 1899.—To Geo. H. Dunbar, of New Orleans, Louisiana, 5,122 24 acres in township 11 south, range 19 east, township 11 south, range 20 east, and township 12 south, range 18 east (Record, p. 1085, document No. 58).

March 14, 1902.—To Lazaro Lopez and William W. M. Dukate, of Biloxi, Mississippi, 510 acres in township 12 south, range 18 east (Record, p. 995, document No. 8).

March 7, 1902.—To Geo. Ruppel, of New Orleans, Louisiana, 620 acres in township 11 south, range 20 east, and township 12 south, range 20 east (Record, p. 1087, document No. 59).

These lands acquired from the State by various individuals were in due course in some instances sold by them to other individuals and corporations, and the rights of ownership and power to transfer enjoyed under the laws of Louisiana, and no contention was ever made as to the State of Mississippi having any right in the lands. In fact, as appears from the record, citizens of Mississippi came to Louisiana and bought these lands, though they were in the heart of the present disputed area created by the present contention of the State of Mississippi.

Isle à Pitre is the main and most important island now claimed by the State of Mississippi under her present island theory of defense. It is composed of sections 23, 24, 25, 26, 27, 28, 32, 33, and 34 of township 10 south, range 20 east, southeastern district of Louisiana, east of the Mississippi river. Yet we find these lands approved to the State of Louisiana by the Commissioner of the General Land Office of the United States May 7, 1852 (Record, p. 1091, document No. 62), as being in and forming part of the State of Louisiana. In turn the State of Louisiana patented these lands to Richard Pindall in 1867 (Record, pp. 47–48–49 and 1155, Exhibits H, I, and J, and document No. 80). Richard Pindall sold these lands to Henry J. Leovy of New Orleans, Louisiana, in 1867 (Exhibits K & Z, Record, pp. 50 and 57). Henry J. Leovy sold them to J. C. Gilmore of New Orleans, Louisiana, in 1892 (Exhibits L and M, Record, pp. 53 and 55), and J. C. Gilmore sold them to the Louisiana Navigation Company, Limited (Record, p. 1081, document No. 56), by which company, Isle à Pitre, the *piece de resistance* of Mississippi's claim in the disputed territory, and other lands are now owned under a chain of title and undisturbed possession extending from 1852 to date, or a period of over fifty years.

In addition to these acts of ownership and sovereignty shown by the sale of these lands in the heart of the disputed territory, and, in fact, composing its whole landed area, other

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acts showing Louisiana's exercise of sovereignty abound in the record.

In all of her official maps, the State of Louisiana claims the peninsula of St. Bernard as her property (maps No. 30, section No. 1, Louisiana Atlas of Maps, p. 24), and in these maps the area in dispute is recognized as forming part of the parish of St. Bernard, a territorial governmental subdivision of the State of Louisiana.

Your honors' special attention is called to a map of Louisiana, representing the several land districts, by W. J. McCulloh, surveyor general of Louisiana, October 1, 1859 (map No. 16, Atlas, p. 5) as distinctly claiming at that date the disputed area to be part of the State of Louisiana, and dividing said area into townships and ranges.

The official map of the parish of St. Bernard (map No. 52, Louisiana Atlas of Maps, p. 47) shows every acre of the landed portion of the disputed territory to be carefully divided into townships, ranges and sections, and claimed to form part of said parish of St. Bernard, including all islands south of the deep-water channel. This is also confirmatory of the testimony of the various citizens of St. Bernard parish to the effect that they had always regarded this area as forming part of the parish of St. Bernard. We make part of this brief a photographic reproduction of this official map of the parish of St. Bernard.

According to the laws of Louisiana, the State taxes, or alimony, are collected by the county or parish officials on all lands, and other property located within the limits of the respective parishes, and when collected, are remitted by these officials to the State treasurer. The State of Louisiana has for years been exercising her sovereignty and collecting taxes on these lands in the disputed territory in cases where the lands were privately owned (Record, p. 772, testimony of E. E. Nunez, sheriff and *ex-officio* tax collector). The lands forming Isle à Pitre, claimed by Mississippi, under her island

theory of ownership, have been paying taxes to the State o Louisiana for years.

Certified copies of the *assessment-rolls* of the parish of S Bernard, made up annually, and showing the lands subjec to State, parish and levee district taxation, and the amoun of such taxes are to be found in the record (Record, pp. 111 to 1136, document No. 65). It is true that these assessment rolls as given in the record, do not go back beyond the yea 1889, but this is explained by the fact that the assessment rolls of previous years were kept in the county or parish court-house of the parish of St. Bernard, which building, with all its contents, was destroyed by fire in the year 188 (Record, p. 149, testimony of Mr. E. E. Nunez, sheriff and *ex-officio* tax collector of the parish of St. Bernard). With the destruction of these official records, a temporary condition of chaos as to tax and land matters necessarily resulted in the parish of St. Bernard, and the State legislature of Louisiana came to her assistance, enacting special legislation to suit the requirements of her peculiar situation (act No. 6 of the Acts of the Louisiana Legislature of 1884, p. 13). To make up the annual listing of property for purposes of taxation, reference was always had to the assessment-rolls of the previous year, and to the transfers of property appearing of record in the conveyance office of the clerk of court in the parish of St. Bernard. With all of these records destroyed, it required a great length of time and an entirely different course of action to get these properties back again on the tax-rolls, the process being gradual and difficult (Record, p. 748, testimony of A. C. Gonzales, assessor). This destruction by fire of these old records, therefore, accounts for our inability to produce copies of them today, and is the reason why we are unable to go back beyond the year 1889, in presently producing this character of evidence or old parish maps of St. Bernard. From the date the records are given, the collection of taxes by the State of Louisiana from these privately owned lands in the disputed area is continuous and con-

secutive, and the rolls in each succeeding year show the changes that have occurred in the individual ownership of the respective properties. By referring for instance, to Record, p. 1120, we see that in the year 1893, Mr. J. C. Gilmore is listed as the owner of the whole of Isle à Pitre in addition to other lands, and that taxes were paid to the State of Louisiana thereon, and that for the year 1903 (Record, p. 1134) they appear as assessed to the Louisiana Navigation Company.

We have already shown, under another heading, in stating our cause of action in this case, acts by the local or parish officials wherein political and police control and jurisdiction was exercised by the St. Bernard officials over the disputed area, notably in the case of the expulsion of non-resident oyster fishermen, when the oyster law was enacted confining to citizens of Louisiana the privilege of fishing oysters from Louisiana waters. Other acts of police control and jurisdiction by Louisiana officials over this general territory, are shown by the record. Mr. Albert Estopinal, lieutenant governor of the State of Louisiana, testifies (Record, p. 180) to an incident occurring many years ago, where a murder was committed in the St. Bernard sea marsh, that the murderer was taken either to Hancock or Harrison county, Mississippi, to be tried; that the Mississippi judge refused to try the case because of lack of jurisdiction, the crime having been committed in Louisiana and that the murderer was subsequently taken back to the parish of St. Bernard in Louisiana where he was tried. Mr. A. S. Cowand (Record, pp. 562 *et seq.*) testifies apparently to the same incident but more in detail as occurring between the years 1857 and 1860, and says that in Grand pass, which separates Isle à Pitre from the main Louisiana marshes, there were, on an Italian holiday, a number of luggers, a character of sailboat, gathered together, the boats being manned by Italians, who got to drinking, which ended in a fight, in which one of the *dagoes* was killed by another, who was

taken to Pass Christian in Harrison county, State of Mississippi, by the others who tried to get the sheriff of that county to take the prisoner in charge; that this Mississippi official refused to act, claiming that the murder had occurred in Louisiana and that he had no jurisdiction; that the prisoner was then turned over to the sheriff of the parish of St. Bernard, Louisiana, where he was tried, convicted and sent to the penitentiary from Terre aux Bœufs in said parish. Mr. Cowand also refers to another incident where a man was drowned at Half Moon or Grand island, and the Mississippi coroner refused to hold an inquest on the body, because he had no jurisdiction, as Half Moon or Grand island was in Louisiana. The destruction of these records also, by fire in the court-house already referred to prevented us from offering official copies of the records of these trials.

As appears from the testimony of Mr. H. C. Smith, parish surveyor of the parish of St. Bernard (Record, pp. 737 *et seq.*), and who was subsequently chief surveyor of the Oyster Commission of Louisiana, the State of Louisiana was continuously exercising jurisdiction in the disputed area by leasing, under the terms of her oyster law, to private parties on the basis of a direct rental, portions of the water bottoms of said locality for the purpose of oyster cultivation.

The disputed territory consists largely of what is known as the *Louisiana marshes*. The name is itself a quasi-recognition of title and ownership in the State of Louisiana. In the XVII paragraph of her answer in this case, the State of Mississippi admits that the marshes have since time immemorial been known as the *Louisiana* marshes, yet she introduced a number of witnesses to prove that they were also known as the *Grand* marshes. Every Louisiana witness, with knowledge of the subject, testified that they were known as the *Louisiana* marshes, while almost every Mississippi witness, who claimed that they were called the Grand marsh, admitted that they were, with as great frequency, called the *Louisiana* marshes. Louisiana then in-

troduced a number of witnesses who were accustomed to visit, year after year, the summer resorts such as Waveland, Bay St. Louis, Pass Christian, Mississippi City and Biloxi, on the main southern shore of the State of Mississippi, and who were, therefore, thrown into daily contact with the citizens of Mississippi at home and under unsuspicious circumstances; and they all, without exception, testify that these marshes were universally called the *Louisiana* marshes by these Mississippians (Record, p. 876 *et seq.*, testimony of Mr. John M. Parker; p. 880 of Mr. Alexander Brewster; p. 885 of Mr. Emile J. O'Brien; p. 891 of Mr. Thomas T. Barr; p. 909 of Justice Frank A. Monroe of the supreme court of the State of Louisiana; p. 916 of Capt. Steve Maloche; p. 922 of Judge Lawrence O. Donnell; p. 927 of Mr. Oswald Ogden; p. 929 of Dr. Jos. T. Scott; p. 932 of Mr. Louis H. Fairchild; p. 935 of Mr. E. H. Farrar; p. 971 of Mr. Louis Cucullu). Of these gentlemen the following, Capt. Steve Meloche, p. 916; Judge Lawrance O'Donnell, p. 922; Mr. Oswald Ogden, p. 927, and Mr. E. H. Farrar, p. 935, all testify that it was generally understood that the deep-water channel was the proper boundary between the States, and Judge O'Donnell, p. 924, refers to a case in which he was counsel, wherein a number of years ago some parties were arrested for violating the then oyster law, and upon it being proved that the offense was committed on the north side of the deep-water channel, the Louisiana judge discharged the accused on the ground that the offense, if any, had been committed in the State of Mississippi, and that he had no jurisdiction. As will be seen by reference to the testimony of His Excellency Governor W. W. Heard, of Louisiana (Record, p. 191), he himself had had pointed out to him by a Mississippian, the Cat Island channel as the true boundary between the two States.

An apt illustration of this universal recognition of the disputed territory as being the property of the State of

Louisiana and within the limits of that State is gathered from the following facts:

"There is a very short bayou, called Three-mile bayou which connects the waters of Mississippi sound and those of the Louisiana marshes. It is one of the three bayous cutting the coast line of the Louisiana marsh, and is much frequented by oyster fishermen (map No. 59, Louisiana Atlas of Maps, p. 53). Messrs. Eugene Ahrens, Jr. (Record, pp. 848 *et seq.*), and Edward Wentzell (Record, pp. 911 *et seq.*), two thrifty and industrious Mississippians, desiring to avail themselves of the commercial opportunities presented in the congregation of oyster fishermen at Three-mile bayou, proceeded to this point and there erected a building in which they conducted a store and bar-room. In due course, they had billheads printed for their firm's business. These billheads had to be localized so far as the place of business was concerned, which was designated as Three Mile, *Louisiana*, as appears from the billheads in the record (Record, pp. 1166 *et seq.*, documents Nos. 90, 91, 92, 93, 94 and 95). The dates on some of the billheads, found in the building, show that they were doing business there in 1901 and 1902. This is further confirmed by the United States Post-Office stamped date appearing on an envelope received from the United States Treasury Department and containing their United States internal-revenue liquor license, for their liquor business done at Three Mile, *Louisiana* (Record, p. 1171, document No. 96). In connection with the location of their place of business, Mr. Edward Wentzell (Record, p. 917) testifies as follows:

Q. "Will you look at this map No. 59, map of Louisiana, and upon being shown Isle à Pitre to the east, and Malheureux point to the west, and Bay St. Louis immediately north, is this the Three-mile bayou, right along the shore between Isle à Pitre and Malheureux point, at which you conducted your establishment?"

A. "Yes, sir."

Q. "Is that the Three-mile bayou to which you had refer-

ence when you printed your billhead as Three Mile, Louisiana?"

A. "Yes, sir; the same place, our place was located right there, right inside of the marsh."

Q. "And you thought then you were in Louisiana when you had those billheads printed?"

A. "Yes, sir; I did."

We, therefore, submit that we have clearly established that the State of Louisiana has consistently and continuously asserted her ownership of and sovereignty over the disputed area, in that the State of Louisiana owned the landed area thereof, and exercised the right to sell the same; that she collected her taxes on those lands there located, belonging to private parties; that she showed by her maps and the action of her State and parish officials that she was sovereign of said area and exercised police control thereof, and that private individuals were protected in their rights by the power of the State, and exercised uninterruptedly their private ownership without dispute or contest by the State of Mississippi. Louisiana's exercise of sovereignty and ownership must now be respected by Mississippi.

Second.

That the various departments of Government of the United States in their interpretation of the acts of Congress respectively creating the States of Louisiana and Mississippi have uniformly recognized Louisiana's ownership of the disputed area.

Having heretofore shown the statutory provisions of the United States on the subject of the boundaries of the States of Louisiana and Mississippi, we must now consider how these statutory provisions were interpreted and construed by the United States officials who would, in due course, be called upon to exercise jurisdiction in regard thereto.

United States Coast and Geodetic Survey.—In making this investigation we will first consider this department of our

National Government, which is perhaps the best informed on the subject of the water boundaries of our several States, as it is specially required, by the United States laws, to survey the coast of the United States, in which undertaking this department, or its predecessors, has been engaged for nearly a hundred years, and the area presently in dispute is part of the coast of the United States.

In boundary controversies that have heretofore developed between other States of the Union, representatives of this department have frequently rendered expert services, sometimes under direct appointment of this honorable court. One of the most expert of these representatives or assistants of the United States Coast and Geodetic Survey Service is Mr. William Chandler Hodgkins who has in his past experience as an expert been identified with the following boundary settlements between the following States of this Union, to wit:

Pennsylvania and Delaware.
Missouri and Iowa.
Maryland and Virginia.
Virginia and Tennessee.

He settled a county boundary between the counties of Spartansburg and Greenville, South Carolina, was the American representative with the English surveying party in the matter of the Alaskan boundary dispute between the United States and England, and was the American agent in charge of the American maps in the recent hearing and settlement of the Alaskan boundary dispute that took place in England (Record, pp. 444 *et seq.*).

As we have previously mentioned, when the commissions appointed by the governors of Louisiana and Mississippi were trying to effect an amicable settlement of the boundary dispute, back in January, 1901, a Mr. F. A. McLain, a United States Congressman from the State of Mississippi wrote a letter January 27, 1901, to the Superintendent of this department asking that official for information in regard to the

boundary line between Louisiana and Mississippi in the present disputed area (Record, p. 997, document No. 9). This letter from Mr. McLain was no doubt prompted by the occurrence of the boundary meeting in New Orleans, January 19, 1901 (Record, p. 20, Exhibit "A"), as it was dated just eight days subsequent to that meeting, and the day following the date of the letter of the governor of Louisiana to the governor of Mississippi, namely January 26, 1901 (Record, p. 22, Exhibit "B"). As the letter itself explained, it was written at the request of I. Heidenheim of Biloxi, Mississippi, who was subsequently chairman of a committee appointed to gather up the Mississippi evidence for her defense of this suit (Record, p. 1705, testimony of Mr. I. Heidenheim).

To return to the subject, this request of Mississippi Congressman McLain, for information as to the proper water boundary between the two States of Louisiana and Mississippi in the disputed territory, was referred, by the Superintendent of the United States Coast and Geodetic Survey for a report, to Assistant William Chandler Hodgkins, whose expert qualifications, for making an unbiased, intelligent and exhaustive report we have just given.

This report was made by Mr. Hodgkins January 30, 1901, and was forwarded to Mr. McLain February 8, 1901 (Record, p. 997, document No. 9). The report, and the accompanying sketches, are reproduced in full in the record (Record, p. 997, document 11) and merit the careful consideration of your Honors. The issues and points submitted to Mr. Hodgkins were the identical issues involved in this suit now before your Honors for decision. Mr. Hodgkins' report shows logically and conclusively, after considering the subject in all of its phases, that the correct boundary between the two States in the locality in dispute is the deep-water sailing channel line contended for by Louisiana. Louisiana's counsel, by a streak of good luck stumbled on this report in their researches just before evidence began to be taken.

Although it was a report from a disinterested United States

official and was absolutely decisive of the disputed issu
although it was made at the request of a Congressman fr
Mississippi, who had been asked to get the report by a g
tleman who subsequently appears in this case, in the rol
chairman of the defense's committee on evidence; althou
it was made at a time when the two States were endeavori
to amicably and extrajudicially settle their differences,
mention of it was then, or ever subsequently, made by M
sissippi; and although it was promptly forwarded by t
U. S. Coast and Geodetic Survey to Mr. McLain, no Miss
sippian ever thereafter knew of its existence or had seen
In order to explain this rather perplexing condition
affairs, Louisiana's counsel caused the said Mr. F. A. McL
to be summoned as a witness in this case, so that his tes
mony might elucidate the subject, but although four separ
subpœnas were issued (Record, p. 985), the United Stat
marshal was never able to serve him and secure his atten
ance.

It is a pity that the report of Mr. Hodgkins never reach
the officials of the State of Mississippi for its effect mig
have caused them to so act as to prevent the necessity f
this suit, unless it be that it was better to hold on till a fin
decree of your honors' court excluded them even from th
neutral territory.

United States Geological Survey.—This department of th
National Government published in the year 1900 its Bulleti
No. 171, devoted specially to a consideration and discussio
of the boundaries of the States and Territories forming ou
Union, and giving a history of the changes in the bounda
ries as they have occurred. We have extracted from th
bulletin and reproduced in the record all that is said on th
subject of the States of Louisiana and Mississippi as well a
the outline sketches of both States (Record, p. 1030, docu
ment No. 33). According to the opinion of this departmen
Louisiana was originally bounded by the deep-water chan
nel and is the owner of the area in dispute today. That is

such is the conclusion we would draw from the report and sketches.

There is no questioning of, or uncertainty about, the fact that this department recognizes Louisiana's ownership of the St. Bernard peninsula. This is shown on the geological map of the disputed area, map No. 18 (Louisiana Atlas of Maps, p. 7) which is perhaps the best map extant of the disputed area. An inspection of this map will show the words "St. Bernard" immediately under the north shore line of the St. Bernard peninsula, commonly called the Louisiana marshes.

United States Commission of Fish and Fisheries.—By a joint resolution of the State of Louisiana, adopted in 1897 (Record, p. 2033), this department of the National Government was requested to make an investigation and report upon certain technical matters in connection with the oyster industry of that State which would require a visit to and inspection of the oyster fields of Louisiana. The investigation was made in February, 1898, by the United States Fish Commission steamer *Fish Hawk* in charge of Lieutenant Swift; and the investigations were conducted and a report made by Dr. H. F. Moore.

These investigations began in the parish of St. Bernard, State of Louisiana, and the study of the local oyster conditions was extended through other parishes of the State. A map was made of the area investigated in St. Bernard parish and the map is reproduced in the record, page 6, as diagram No. 4. This map shows that the area investigated and reported on, as being in St. Bernard parish, Louisiana, was in fact the area that constitutes the disputed territory of today. In other words, without any previous suggestions or instructions from any one on the subject, Dr. Moore and Lieutenant Swift entered the disputed area of today, naturally understanding that it was a part of and within the limits of the State of Louisiana and they, by their acts, so reported that in the opinion of this department the area, from the data they had, was naturally supposed to belong to the State

of Louisiana. An extract from this report of Dr. Moore appears in the record (Record, p. 2033) wherein the conditions existing in the early part of the year 1898 in the disputed area are set forth. The location of the Louisiana oyster reefs in the disputed area is accurately set forth in the map above referred to and the whole incident is a clear recognition of Louisiana's ownership.

General Land Office of the United States.—This department has in charge the general surveying of the area of our country and as far back as the year 1842 began the detail survey of the land forming the disputed area. Township plats showing the detail in each township appear in the record as documents Nos. 7 and 38 to 50, the latter both included, record beginning at page 1046. Document No. 7, is found in Record, p. 994.

This survey shows the disputed area of today to be comprised within the following townships, to wit:

T. 10 south, ranges 17, 18 and 20 E.

T. 11 south, ranses 17, 18, 19 and 20 E.

T. 12 south, ranges 16, 17, 18, 19 and 20 E.

T. 13 south, ranges 16, 17, 18, 19 and 20 E.

The survey further showed the following to be the location of the islands south of the deep-water channel line, to wit:

Marsh island as section 26, T. 10 S., R. 17 E.

Half Moon or *Grand island* as being comprised of—

Section 36, T. 10 S., R. 17 E.

Sections 29, 31, 32 and 33, T. 10 S., R. 18 E.

Section 1, T. 11 S., R. 17 E.

Sections 5 and 6, T. 11 S., R. 18 E.

The above islands are immediately south of the deep-water channel and just alongside of it.

Unnamed island as sections 2 and 11, T. 11 S., R. 17 E.

Petit Pass island as sections 14 and 23, T. 11 S., R. 17 E. See township plat, Record, p. 1047*a*—38.

Isle à Pitre as sections 23, 24, 25, 26, 27, 28, 32, 33, and 34 of T. 10 S., R. 20 E.

All of these islands and other lands are designated as being in the southeastern land district of Louisiana, east of the Mississippi river, and as forming part of the State of Louisiana.

When the State of Louisiana, in the year 1852, under the swamp-land grants of Congress of 1849 and 1850 selected these islands and other lands as being within her State limits and enuring to her under the provisions of the acts of Congress just referred to, this department of the National Government on May 6, 1852, recognized the correctness of Louisiana's claim to these lands and they were promptly approved and patented to her as a State (Exhibit "G," Record, pp. 27 to 46, both inclusive; documents Nos. 62 and 63, Record, pp. 1091 to 1103). This was a specific recognition of Louisiana's ownership of the lands composing the disputed area.

And similar action was taken by this department of the National Government in the matter of the application of the State of Mississippi to the United States for the lands enuring to that State under the provisions of the swamp-land grants of Congress.

Mr. E. H. Wall, State land commissioner of the State of Mississippi, a witness for the State of Mississippi, testified, on cross-examination (Record, pp. 1755 *et seq.*), that the State of Mississippi had in former years applied to the United States Government for the lands enuring to that State under the swamp land grants of 1849 and 1850 and had received her swamp lands, and he admitted that the State of Mississippi had never selected and had never had approved to her, as shown by the books of the State land office of Mississippi, any lands in the disputed area of today. This testimony further shows that the State of Mississippi did have in her land-office books a record of the land forming St. Joseph's island, and as this island lies immediately north of the deep-water channel, it is a recognition of the deep-water channel

as the boundary and that the rights of the State of Mississippi did not extend south of that channel.

The General Land Office of the United States has been equally and uniformly consistent in its recognition of Louisiana's ownership of the disputed area in all the maps it has caused to be made of the States of Louisiana and Mississippi respectively, as will be seen by a reference to the following maps appearing in our Atlas of Maps, to wit:

State of Louisiana, 1879, Map No. 35, Atlas, p. 33.
State of Louisiana, 1886, Map No. 36, Atlas, p. 34.
State of Louisiana, 1887, Map No. 61, Atlas, p. 54.
State of Louisiana, 1896, Map No. 39, Atlas, p. 36.
State of Mississippi, 1890, Map No. 37, Atlas, p. 35.

We therefore submit that it has been proven from the first to the last, by United States statutory enactments and by the interpretation of same by our National Government's official departments, that the area in dispute has been consistently and uniformly recognized as the property of the State of Louisiana, and that the deep-water channel has been recognized as the proper water boundary in that locality.

Third.

Recognition by the State of Mississippi of the disputed territory as being the property of the State of Louisiana, and that her present boundary pretension is but a matter of recent creation after long years of recognition of, and acquiescence in, Louisiana's ownership and sovereignty.

It was only after the oyster fishermen of Mississippi by their wasteful system of fishing had either fished up or destroyed all of the Mississippi oysters of any value that these fishermen began to invade Louisiana waters in search of the bivalve.

Until recent years the Louisiana fisheries were open to all, but are now closed to all except her citizens, a plan that was

initiated by many of the oyster-producing States of the Atlantic coast, as we have previously mentioned.

It was the exercise of this right by Louisiana that incurred Mississippi's displeasure and brought on this boundary suit. We now propose to show how, prior to this, the State of Mississippi never made any claim to the disputed territory, but officially recognized it as belonging to Louisiana.

The lands forming the disputed territory have existed since Louisiana and Mississippi were created States, nearly one hundred years ago, yet Mississippi has, not only had no title or ownership thereto, but has never sought in over fifty years to find out why she was not given a title thereto, tacitly recognizing Louisiana's prior and better claim.

Mr. E. H. Wall, State land commissioner of Mississippi, was summoned by Mississippi as a defense witness in this case. He testified (Record, p. 1755) that there is no record on the books of the land office of the State of Mississippi showing Mississippi to have any interest in the landed part of the disputed area. He testified further that the former governors of Mississippi had, as representing that State, asked the United States for the swamp lands to which Mississippi would be entitled under the United States swamp-land grants of 1850. He stated further that Governor Vardaman of Mississippi, elected governor of said State *after this suit had been instituted by the State of Louisiana*, had recently written and asked the Secretary of the Interior of the United States for everything within the 18-mile limit, but had at that date, August 20, 1904, received no reply so far as he was able to ascertain. In other words, it was after Louisiana had owned these lands for over fifty years by deed of the United States that Mississippi was first inquiring why she did not own them.

The State of Mississippi is to be presumed to know, or at least to have ascertained, what lands she was entitled to receive under the swamp-land grants of the United States

Congress of 1849 and 1850. As a matter of fact, she did select her lands under those acts, and the lands selected were approved to her, but never did she make a pretense of claiming to own, nor did she try to select, under those laws, any of the sea marsh islands in Mississippi sound and Lake Borgne now claimed by her for the first time in her defense of this suit, filed after over fifty years' possession of these lands by the State of Louisiana, nor did she ever make, until now, any claim to the sea marsh lands in the Louisiana marshes in the St. Bernard peninsula. Not only did she fail to initiate any proceedings of her own accord, during these many years, to have her ownership of these lands recognized, and the title to the lands placed of record in the books of her State land commissioner, but even when her attention was called to it by an application for some of these lands in the disputed area today, she took no steps to secure title, but through her State land commissioner admitted that she had no title to the lands.

Mr. Casimier Harvey, (Record, pp. 952 *et seq.*), a resident and citizen of Back Bay, Biloxi, State of Mississippi, where he was born 59 years ago, testified that he wanted to buy the lands around Creole gap, which divides Isle à Pitre into two parts, and is part of the disputed area of today, and that he wrote, or caused a letter to be written, to the State land commissioner of the State of Mississippi at Jackson, Mississippi, applying for these lands, and that his letter was returned by the said State official of Mississippi with a statement to the effect that no record of Mississippi's ownership of said lands appeared on the records of his office, and that, necessarily, he could not make title to said lands. That was about the year 1887, and still no step was taken by the State of Mississippi to secure title to these lands, and as testified to by Mr. E. H. Wall, Mississippi State land commissioner, no steps were taken to claim title to these presently disputed lands until Governor Vardaman of Mississippi, who took his office January 19, 1904, *two years after this suit was instituted,*

made claim to them on behalf of the State, or at least initiated inquiries to that end (Record, pp. 1759 and 1756).

Mississippians cannot allege that they did not know that these lands were privately owned. Mr. Joseph C. Gilmore, who owned Isle à Pitre, and who was troubled by parties removing shells from his property, testifies (Record, p. 764) that he caused an advertisement to be published in the Pass Christians (Miss.) *Beacon* and the Biloxi (Miss.) *Herald*, Mississippi coast newspapers, that the Gilmore brothers prohibited trespassing on their property and yet no protest came from any Mississippi officials.

As acts and instances wherein the State of Mississippi has recognized the State of Louisiana's ownership of the disputed area, in addition to the striking example of her failure to claim under the swamp-land grants of Congress the swamp lands in the Louisiana marshes which she is now claiming, may be mentioned the following:

The legislature of the State of Mississippi passed an act entitled, "An act to provide for a survey of the Mississippi coast," under which the governor of the State of Mississippi was authorized to contract with an engineer and surveyor for the performance of the work. Under authority of this act, his excellency A. G. McNutt, then governor of the State of Mississippi, contracted with a Mr. John Wheeler, engineer and surveyor, to make the survey and a report. The survey was made by Mr. Wheeler, who submitted his report to the governor of Mississippi December 13, 1839, which report included a detailed sketch of the coast of Mississippi (Record, pp. 1145 *et seq.*, document 73), and owing to its important bearing on the issues of this case, we reproduce both the sketch and report in full in the record. A reference to the sketch (Record, p. 1148) shows:

First. The existence of the deep-water channel claimed by Louisiana to be the proper boundary in the waters of Lake Borgne and Mississippi sound, as emerging from Pearl

river and extending out into the open waters of the gulf of Mexico, north of Chandeleur islands.

Second. Emerging from the Rigolets, the old Louisiana eastern channel boundary of 1803, at this point, and how this Rigolets channel runs into the Pearl River channel, as it proceeds eastward to the gulf of Mexico.

Third. That no claim was made by the State of Mississippi that the lands of the St. Bernard peninsula formed any part of the coast of the State of Mississippi.

The territory lying south of the deep-water channel is shown in an outline to be of peninsular formation, no name is given to it on the sketch, and no claim is made to it, although the depth of the channel between Cat island and Isle à Pitre is given. It is also true that Isle à Pitre, at the point of the St. Bernard peninsula is not, on said sketch, called by that name, nor given any individuality. It is designated merely as forming part of the general territory, south of the deep-water channel, to which the State of Mississippi made no claim.

If there be any doubt upon this point, by reason of the fact that the recognition of Louisiana's ownership and Mississippi's disclaimer of ownership, is purely negative, this doubt is settled in favor of a definite recognition by Mississippi of Louisiana's ownership, by reference to the written report (Record, p. 1147, next to last paragraph) where this territory, southwest of the deep-water channel or South pass, is called the *Louisiana marsh*. It is to be noted that the report only discusses Horn, Pilit Bois, Cat and Ship islands as belonging to Mississippi and these are east of the disputed territory.

Taking the sketch and report together, they clearly indicate a recognition by the State of Mississippi of Louisiana's then ownership of the area disputed by Mississippi today.

As we have already stated, in an earlier part of our brief, no cartographer, of the United States or elsewhere, has ever made a map recognizing any rights of the State of Mississippi in the St. Bernard peninsula. We now announce the fact, most important to a decision of the issues of this case;

That the official maps of the State of Mississippi recognize Louisiana's ownership of the disputed territory.

On October 26, 1866, there was approved by the then governor of the State of Mississippi, Mr. Benjamin F. Humphreys, an act of the legislature of the State of Mississippi entitled, "An act to create the office of State engineer for the purpose of compiling a new State map under certain conditions" (Record, pp. 1729 *et seq.*).

As will be seen by reference to the act, this map was to be official, and three copies were to be furnished to each county in the State of Mississippi, so that it is to be presumed that the coast counties of Mississippi received their share.

On May 10, 1871, there was also approved by Mr. J. L. Alcorn, then governor of the State of Mississippi, another act of the legislature of the State of Mississippi entitled, "An act to grant aid for the purpose of revising and publishing an official map of the State" (Record, pp. 1730 *et seq.*)

Capt. T. S. Hardee, appointed State engineer of the State of Mississippi under the provisions of the two above-mentioned acts of the Mississippi legislature, made an official map of the State of Mississippi, which was approved May 10, 1871, by his excellency, J. L. Alcorn, then governor of the State of Mississippi.

In the evidence offered by the State of Louisiana, one of these maps is found under the number 46 bound in the Louisiana Atlas of Maps, p. 43. This official map of the State of Mississippi specially, by its coloring, recognizes Louisiana's ownership of the disputed territory. Counsel for the State of Mississippi appreciated the serious effect,

against their present contention, that the offering of this map would have, and they thereupon proceeded to attack it in every way possible, their main contention being that as the map was approved by a *reconstruction* governor that it was not deserving of credence and respect, and they proceeded, by the testimony of ex-Governor Robert Lowry (Record, p. 1711) and others, to show that Governor Alcorn was a radical or Republican governor elected by the elements that were in control after the civil war. In contrast to him, they eulogized the merits and honesty of his excellency Benj. F. Humphreys, who was the Democratic governor preceding Governor Alcorn, and the Mississippi witnesses admitted that anything that Governor Humphreys approved must be corrrect and free from suspicion. With these facts once in the record, Louisiana's counsel then established a fact, that was apparently unknown to counsel for the State of Mississippi, namely, that there was a previous issue of this same official map of the State of Mississippi made by Captain T. S. Hardee, that this previous issue was, as to Mississippi's recognition of Louisiana's ownership of the disputed territory, exactly the same as the Alcorn map, that this official map had been made by authority of the act of the Mississippi legislature approved October 26, 1866 (Record, pp. 1729 *et seq.*); and that this official map of the State of Mississippi which thus plainly, clearly, distinctly and officially recognized Louisiana's ownership of the presently disputed territory had been approved by that paragon of probity, honesty and propriety, his excellency Benjamin F. Humphreys, governor of the State of Mississippi (map No. 65, Louisiana Atlas of Maps, p. 58), and as the map is an important recognition of Louisiana's ownership of the disputed area, as shown by the coloring, we reproduce here in our brief a colored photographic reprint of the disputed area as shown on said map, together with a reproduction of the governor's approval.

Nor is this the only instance where, by the official maps of Mississippi, that State has recognized Louisiana's ownership of and sovereignty over the area in dispute today.

Notable among the other maps may be mentioned the following:

1st. Official map of the State of Mississippi published in accordance with an act of the State legislature approved March 8, 1882, by the State board of immigration and agriculture and prepared under the directions of E. G. Wall, commissioner (map No. 32, Louisiana Atlas of Maps, p. 30).

2d. Rand, McNally & Co.'s sectional map of Mississippi, *compiled from the records of the office of the surveyor general and of the board of immigration and agriculture, Jackson, Miss.* (map No. 44, Louisiana Atlas of Maps, p. 41).

3d. Railroad commissioners' map of Mississippi (map No. 64, Louisiana Atlas of Maps, p. 57).

In fact, as we have previously stated, after a most exhaustive research, we have failed to find any map of either Louisiana or Mississippi, covering the area in dispute, which recognized or showed that the State of Mississippi had any right in or to the area she is claiming today, save and except the lone, solitary, instance of the Mississippi railroad commission map issued in 1904, *two years after this suit was instituted*, wherein, on the Eighteen-mile Island theory, Mississippi for the first time cartographically extends her claims into the St. Bernard, Louisiana, peninsula, which action on the part of the State of Mississippi is, we submit, a confession of the absolute weakness of her prior claim, to such an extent as to preclude its serious consideration today (map No. 71, Mississippi Atlas of Maps, p. 4), and Louisiana is justified in claiming that the State of Mississippi has officially recognized Louisiana's prior and better claim to the disputed area

and that this area is part of Louisiana because it is south of the deep-water channel which separates the two States as the true boundary line.

With this statement of the facts upon which Louisiana bases her plea of title by prescription, usucaption and acquiescence, we now furnish the following authority on the international law of prescription:

Priority of Right, Acquiescence, Prescription, Assertion of Title, Ownership and Sovereignty as Derived Therefrom.

These various sources of title and ownership are generally treated by the commentators on international law, under one general heading. Pradier-Fodéré treats them under the heading "Comment les États acquierent la propriété territoriale," "How States acquire territorial property;" Tom. II, Droit International Public, § 781, p. 337, from which author we prefer to quote as being more thorough, and exhaustive and he collates the opinions of all the great international law-writers, and criticises their unmethodical treatment of the various manners of acquiring property by States and nations. He says that Klüber, and G. F. De Martens "n'admettent que l'occupation et les conventions; les autres comme Heffter citent la cession, les accroissements naturels, l'occupation, Wheaton parle de l'occupation, de la conquête, de la cession, confirmées par la presumption qui resulte d'un long laps de temps, ou par des traités et d'autres contrats avec les États etrangers. Suivant Bluntschli il faut compter parmi les moyens d'acquérir la propriété la prise de possession ou occupation, la cession, l'incorporation (dans trois cas) la conquête, la prescription, l'echange (dans un cas) l'accession. Dudley Field admet l'occupation, l'accession, (comprenant l'alluvion) la cession, la conquête. Pasquale-Fiore en seigne que les Etats acquierent la propriété territoriale par l'occupation, les traités, la conquête, la prescription, l'accession, et dans certains cas la succes-

sion, et le testament. Calvo par la prise de possession, la cession, l'incorporation (dans trois cas), la conquête, la prescription, l'alluvion, l'occupation de contrees desertes." Our author comments on this diversity of opinion and the want of precision, which he says throws the subject into somewhat of confusion, and in order to systematize the treatment of the subject, and discuss it in something like order, he recurs to the civil law, from which international law is derived, as to the various manners of acquiring property by individuals. In §§ 782, 783, 784, 785, p. 338 *et seq.*, he first discusses "occupation," and sums up the doctrine that the occupation must be with the idea of permanent control and possession. and in § 791 *et seq.*, p. 345, he treats the question "Mais comment cette prise de possession se conservera t'elle?" He cites G. F. De Martens who agrees with Vattel, that the actual occupation must continue in some form, by cultivation, or some such actual use, drawing material, &c., therefrom, and not by mere signs, crosses, inscriptions, and other figurative occupation. He says that, on the other hand, Klüber and Bynkershoëk contend that there need not be actual continuous corporeal possession "a titre de proprietaire," but it is sufficient if "tous les signes extérieurs qui marquent l'occupation et la possession continue," and it is sufficient if these signs serve to show that there has been no intention of abandonment of occupation or possession. He further says that Heffter seems to hesitate to pronounce himself between these two doctrines, "De simples declarations verbales, dit-il, des signes incertains d'une appropriation projetée, lorsqu'ils sont contredits par les faits, et qu'ils rendent l'intention douteuse ne pourvont pas être regardés comme un titre valable, bien que la pratique des nations ne soit quelque fois prévalue de mesures semblables." The author (Fodéré) coincides in the opinion of Vattel and De Martens, and says that the civilized nations of the world do not regard the mere discovery or claiming territory, without

a continued possession and occupation, as giving either title, ownership or sovereignty.

Translation.

G. F. De Martens—"Only admitting that occupation and conventions; the others as Heffter cited cession, natural increase, occupation; Wheaton speaks of occupation, cession confirmed by presumption which results from the long lapse of time, or by treaties and other contracts with foreign States. Following Bluntschli we must account among the means of acquiring property or taking possession or occupation, cession, incorporation (in three cases), conquest, prescription, exchange (in one case) accession. Dudley Field admits occupation, accession (including alluvion), cession, conquest. Pasquale-Fiore teaches that the States acquire territorial property by occupation, treaties, conquest, prescription, accession and in certain cases succession, and testament. Calvo, by the taking of possession, cession, incorporation (in three cases), conquest, prescription, alluvion and occupation of abandoned countries." * * * "But how is this taking of possession continued and kept," it must be "under title of propriety" with "all the exterior signs which mark occupation and continuous." * * * "Simple verbal declaration" says he "uncertain signs of a projected appropriation when they are contradicted by acts, which render the intention doubtful cannot be regarded as a good title, especially where the parties of nations do not allow to prevail similar measures."

Under section 820, p. 381 Fodéré discusses prescription, confining it to that class of prescription, which is known in the civil law as "prescription acquisitive ou usucaption." In section 821, p. 382, he propounds the question "La prescription est-elle de droit naturel ou seulement de droit civil?" "Is prescription from natural law or only from the civil law," and says that Grotius assigns it to the civil law,

as according to natural law long possession should not necessarily constitute title or ownership. Cujas, he says, also assigns it to the civil law and rejects it from both natural and international law. Merlin, he says, contends that it is both natural and civil law, as being essentially equitable. Fodéré seems to think that it is not natural but civil law, but says, " Mais en réalité il importe peu que la prescription soit de droit naturel ou de droit civil ; il suffit qu'elle soit utile et qu'elle réponde aux exigences, non seulement de l'intérét privé, mais encore et surtout de l'intérêt général. 822, Cette consideration me seurva a resondre la question de savoir si la prescription existe et peutêtre invoquée en droit naturel, question trés débattue et sur laquelle les auteurs ont jété peu de lumière." In section 823 he cites and quotes G. F. De Martens to the effect that, in international law, when a nation or a State sees another State or nation take possession of and acquire by occupation a portion of its territory, and so continues for a long time without any claim by the first nation, which remains silent, there is a tacit renunciation of ownership and an acquiescence in the ownership of the second occupant and possessor. On page 384, Martens is quoted as saying in regard to presciption " L'avantage mutuel des nations semble a la vérité, exiger qu'on la reconnaisse ; on pourrait donc en faire un principe de droit naturel social par rapport a ces nations reconnues pour vivre dans une société générale ; cependant on n'a rien gagné encore tant qu'on ne peut fixer l'espacede temps necessaire pour l'acquisition ou pour l'extinction des droits par prescription ; et il est evident que le droit naturel ne peut pas fixer cet espace de temps avec la precision nécessaire" Fodéré cites Klüber and Heffter as in effect opposed to the doctrine of absolute prescription, as a part of international law, but Fodéré adds " Il est vrai que Heffter domet la renonciation tacite resultant d'un abandon voluntaire qui met la possession à l'abri de toute contestation, el que parmi les cas d'abandon empor-

tant renonciation il range la présumption d'abandon qui resulte d'une tres longue possession non contestée et non interrompue" Mais dit il "c'est toujours aux principes de la renonciation qu'il faut recourir en pareille question ; la prescription est purement une question de fait" and again Fodéré says quoting from De Martens "tandis qu'elles-memes se curent en devoir d'empêcher par les declarations faites à temps que les presomptions qu'elles ont fait noirtre n'induisent d'autres nations dans une erreur préjudiciable, elles paraissent avoner par la obligation de rompre lesilence a l'egard des droits qu'elles ne veulent pas abandonner" "L'usage constant et approuve des nations, dit Wheaton, montre que, quelque soit le nom que l'ondonne a ce droit, la possession non interrompue par un *État* d'un territoire ou de toute autre bien pendant un certain laps de temps exclut les droits de tout autre *État* a cet égard, de meme que le droit naturel et civil de toutes les nations civilisées assure a un particulier la propriété exclusive d'un bien qu'il a possédé pendant un certain temps sans que personne ait prétendre y avoir les droits."

In section 825 Fodéré contends that prescription is a fundamentally necessary part of international law, and he quotes Bluntschli to that effect. In section 826 he says: "Vattel excellement démontré que l'usucapion et la prescription sont d'un usage beaucoup plus necessaire entre les *États* souverains qu' entre les particuliers;" and he further quotes Vattel to show that the rejection of usucaption and prescription from international law would produce constant quarrels, wars, and disagreements among the States and nations, which would constantly threaten and involve the peace of the civilized world. He quotes Vattel also to show that tacit or silent acquiescence by a State or nation, in the occuption of territory, claimed by it, by a foreign power, will fortify ownership and title by prescription and usucaption, which Vattel calls "une approbation tacite." In sec-

tion 828, Fodéré discusses, and quotes from Vattel, the length of time by which prescription can be acquired, and recommends that it ought to be fixed by treaties.

Translation.

"But, in reality it matters but little whether prescription comes from natural or from civil law. It suffices that it is useful and that it answers exigencies, not only of private interest, but yet and above all general or public interest. This consideration serves me to solve the question of knowing if prescription exists and can be invoked in natural law, a question which has been much debated and disputed, and upon which authors have thrown but little light." * * * "The mutual advantages of nations would seem in truth to exact its recognition; we can then adopt it as a principle of natural social law in relation to those nations recognized as living in a general society; nevertheless there is nothing gained since we cannot fix the space of time necessary for the acquisition, or for the extinction of rights by prescription; and it is evident that natural law cannot fix this space of time with the necessary precision." * * * "It is true that Heffter admits the tacit renunciation resulting from a voluntary abandonment which puts possession beyond all contest, and among the cases of abandonment which results from a very long possession not contested or interrupted. But, says he, it is always to the principle of recognition that we must incur in such a question; prescription is purely a question of fact." * * * "Since they themselves ought to have stopped by declarations made at the time and should not induce other nations into a prejudicial error; they should appear to declare by the obligation to break the silence in regard to the rights which they did not intend to abandon." * * * "The constant and approved use of nations says Wheaton, shows that whatever name that we will give to this right, possession not interrupted by a State or a Territory or

of any other thing during a certain lapse of time excludes the rights of others in this regard. Since natural and civil law of all of the civilized nations assures to a particular individual the exclusive property of a thing which has been in possession during a certain time without any one pretending to have any rights concerning it." * * * "Vattel excellently demonstrated that usucaption and prescription are of a much more necessary use between sovereign States than between individuals."

In section 829—Fodéré admits that certain commentators on international law do not admit prescription or *usucapsion* in international law, except under the doctrine of *uti possidetis, jus et favor possessionis*, to the limited degree, as following conquest or force of arms.

In section 832, Fodéré explains the right of ownership which has accrued from the long gathering of the fruits and products of a territory, or thing which is called in the civil law, *perception*. He says "Par *perception il faut entendre le fait d'avoir recueilli les fruits produits par une chose.*" Fodéré claims that the same principle and doctrine forms part of international, as it does of civil law. He says that Heffler denies the proposition, and that Heffler quotes from Groteus to fortify his dissent. Following the subject up the author then goes on at too great length to quote here the question as to "*Comment se perd le propriété du territoire?*" and instances occupation by another State, prescription, abandonment, and neglect to assert ownership and title.

Translation.

"By perception must be understood the fact of having gathered the fruits produced by a thing."

This doctrine of ownership by prescription in favor of nations and States has bean frequently maintained both in arbitrations and by judicial decisions of our own courts. In

his decision as arbitrator between England and Portugal as to the ownership of Delagoa bay and the islands therein, President McMahon of the French Republic decided in favor of Portugal on account of the discovery of the bay by the Portuguese in the 16th century, and that Portugal had asserted title in 1732 against Holland, and against Austria in 1781 and had exercised the right of continuous ownership; that there had been a tacit acknowledgment by England of Portugal's ownership and possession as late as 1817, and no claim by England to the ownership, except one in 1823, based on some treaties with native neighboring tribes by an English officer. This award was made at Versailles, 24th of July, 1875 (State Papers, vol. 66, 1874, 1875, pp. 554 *et seq.*).

In an arbitration between Great Britian and Venezuela, to settle the boundary line between British Guiana and Venezuela (February 2, 1897) it was agreed that "adverse holding or prescription during a period of fifty years shall make a good title. The arbitrators may deem exclusive political control of a district, as well as actual settlement thereof, sufficient to constitute adverse holding or to make title by prescription" (Moore's International Arbitration, vol. 5, pp. 5017 *et seq.*). We have said that our courts have in such cases judicially recognized the plea of prescription and sustained it between States of the American Union.

The case of Keyser *vs.* Coe, 9 Blatchford, 32, presents an issue between two individuals in regard to the question as to whether Goose island, in Long Island sound, belonged to New York or Connecticut. The court decided in favor of Connecticut, saying (p. 41) "The possession of Connecticut has always been consistent with this view of the documentary title. So far as these islands have been permanently occupied at all, that occupancy has been by citizens of this State, who have recognized its jurisdiction over their island possessions. In conveyances, the land of which they are composed has been described as lying within the State, and the deeds thereof, offered in evidence, have been recorded in

the appropriate land records within the same jurisdiction. * * * To this uniform possession of Connecticut, New York has made no adverse claim, so far as we are apprised, except in the single instance" referring to a correspondence between the officers of the two States in 1765. And the court sustained the claim of the State of Connecticut by reason of prescription and uninterrupted possession of the island. This language setting forth the facts in this case admirably fits the case at bar between Louisiana and Mississippi as almost the identical facts alluded to by the court in regard to Connecticut's possession can be applied to the possession of Louisiana.

And these principles of general international have been applied and sustained by this honorable court in cases of boundaries between States of the Union.

As early as the case of Rhode Island *vs.* Massachusetts, this honorable court recognized the right of a State to ownership by prescription, in a boundary suit saying, on p. 638, in 4th Howard:

"More than two centuries have passed since Massachusetts claimed and took possession of the territory up to the line established by Woodward and Saffrey. This possession has been steadily maintained, under an assertion of right. It would be difficult to disturb a claim thus sanctioned by time, however unfounded it might have been in its origin."

On pages 591 and 639 the court, speaking of the long possession of Massachusetts, and the delays in alleging any mistake in the action of the commissioners of the colonies, said:

"Surely this, connected with the lapse of time must remove all doubts as to the right of the respondent under the agreements of 1711 and 1718. No human transactions are unaffected by time. Its influence is seen on all things subject to change. And this is peculiarly the case in regard to matters which rest in memory, and which consequently fade

with the lapse of time and fall with the lives of individuals. For the security of rights, whether of States or individuals, long possession under a claim of title is protected. *And here is no controversy in which this great principle may be invoked with greater justice and propriety than in a case of disputed boundary.*" (Italics are our own.)

In Missouri *vs.* Kentucky, 11 Wallace, 403, this honorable court laid great stress on the long possession by Kentucky of the disputed territory, as cumulative and confirmatory of other proof in establishing Kentucky's ownership, the court saying:

"There is, therefore, nothing in this record which shows that Kentucky has not maintained for a long course of years, exclusive possession and jurisdiction over this territory and the people who inhabit it. It remains to be seen whether she shall remain in possession and continue to exercise this jurisdiction or whether she shall give way to Missouri."

And, on page 410, the court says, after discussing the testimony of witnesses about the exercise of dominion and jurisdiction by Kentucky over the disputed territory:

"Can there be any need of further evidence to sustain the long-continued possession of Kentucky to the island?" &c.

And the court sustained Kentucky's claim, and dismissed the bill of the State of Missouri.

So in 136 U. S., 511, this honorable court based its decision in favor of Kentucky as against Indiana, on the seventy years' possession and exercise of jurisdiction over the land in question, uninterrupted by any claim of Indiana, by virtue of prescription, and quoted Vattel, Pradier-Fodéré, and Wheaton as maintaining the doctrine of prescription in settling boundaries between States. In that case this honorable court said:

"The long acquiescence in the exercise by Kentucky of dominion and jurisdiction over the island is more potential than the recollections of all the witnesses produced on either

side. * * * It is a principle of public law universally recognized, that long acquiescence in the possession of territory and in the exercise of dominion and sovereignty over it is conclusive of the nation's title and rightful authority."

In Virginia *vs.* Tennessee, 148 U. S., 522 *et seq.*, the same doctrine is upheld and reaffirmed by this honorable court, supporting it with abundant English and American authorities, quoting from Rhode Island *vs.* Massachusetts, 4 Howard, 591, 639, and also from State of Indiana *vs.* Kentucky, 136 U. S., 479, 510, the following: "It is a principal of public law, universally recognized, that long acquiescence in the possesion of territory and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and rightful authority." The court also quotes Vattel to the same effect, as follows:

"The tranquillity of the people, the safety of States, the happiness of the human race do not allow that the possessions, empire, and other rights of nations should remain uncertain, subject to dispute, and ever ready to occasion bloody wars. Between nations, therefore, it becomes necessary to admit prescription founded on length of time as a valid and incontestable title (Book II, c. 11, § 149)." (French text in bottom note.)

The court also quotes the following from Wheaton in his International Law: "The writers on natural law have questioned how far that peculiar species of presumption, arising from the lapse of time, which is called *prescription*, is justly applicable as between nation and nation; but the constant and approved practice of nations shows that by whatever name it be called, the uninterrupted possession of territory or other property for a certain length of time excludes the claim of every other in the same manner, as by the law of nature and the municipal code of every civilized nation, a similar possession by an individual excludes the claim of every other person to the article of property in question (part II, c. 4, § 164)." The court then proceeds to show that

the State of Virginia had manifested "its acquiescence for over eighty-five years, embracing nearly the lives of three generations," on the boundary line, by various acts, which she was now attempting to overthrow and change.

In Iowa *vs.* Illinois, 147 U. S., 1, and 151 U. S., 239, the whole doctrine of the boundary line between States of the Union, being on navigable rivers at the main channel or "thalweg" is fully discussed, maintained and fortified by quotations from commentators on international law, such as Halleck, Creasy, Wheaton, Twiss, Woolsey, Phillimore and others.

We thus have conclusively shown, as we confidently believe, that the general principles of international law on the subject of prescription, as between independent nations and States, have been applied by this honorable court to no less than six boundary cases between the States of the American Union.

In the case at bar the evidence abundantly shows that Louisiana has continuously occupied the territory in dispute from 1812 to date, during a period of ninety-three years, and has in every way exercised complete dominion over it, in which Mississippi acquiesced until, in her code of 1880, she for the first time made a pretense in that code to the dominion over the islands *by a general reference therein to islands within six leagues of her shore*, but never attempted any physical possession or control until after 1900, when she first began to assert actively her ownership of the disputed territory, when by improvident use and neglect the oyster fishermen of Mississippi had destroyed the oyster fields of that State and were seeking new fields to conquer. This circumstance will not overthrow the facts and law cited sustaining Louisiana's title by prescription to the area in dispute.

MISSISSIPPI'S DEFENSE.

In our final consideration of the many elements that go to make up a full presentation of the issues of this case, it is necessary to consider the theory upon which counsel for the State of Mississippi will base that State's claims to the ownership of the disputed territory, and with a knowledge of this theory once obtained, we can show its fallacies and inapplicability to the issues of this case.

We take it that the State of Mississippi claims the disputed area because it is assumed to be composed of islands, and as these islands are within six leagues or eighteen miles of her shore, that they were given to her by the act of Congress creating her a State on December 10, 1817.

Louisiana admits that there are some islands in the disputed area, namely, Grassy, Half Moon or Grand, Le Petit pass, an unnamed island and Isle à Pitre, all of which are between the deep-water channel on the north and the main coast line of the St. Bernard peninsula on the south; and contends that these islands were previously given to her, Louisiana, by the act of Congress creating her a State, April 6, 1812, nearly six years prior to Mississippi's creation as a State, and that her title thereto is better than that of the State of Mississippi, and Louisiana further contends that these islands are hers by reason of the fact that they are south of the deep-water sailing channel line which is the true boundary between the two States. The relative merits of these contentions we have already discussed at length, showing as a result of the argument that these above-named islands are, for the reasons heretofore given, truly the property of the State of Louisiana.

But we come now to another phase of this case, to which we have previously referred but incidentally, namely, to the topography of the peninsula of St. Bernard. Mississippi bases her claim to that portion of the disputed area within

six leagues of her shore on the theory that the peninsula of St. Bernard and the Louisiana marshes constitute an *archipelago of islands* and not a *peninsula* in the true sense of the words, and, as islands within eighteen miles of her shore, are hers.

Louisiana admits that there are today in the body of the *Louisiana marshes*, or *St. Bernard peninsula*, some portions and spots of sea marsh which might technically be denominated as islands because they are entirely surrounded by water, but alleges that these bodies of sea marsh are not true islands even today and are not to be regarded as such.

Mr. E. H. Wall, commissioner of the State land office of the State of Mississippi, in the year 1904, two years subsequent to the institution of this suit by the State of Louisiana, wrote a letter to the Commissioner of the General Land Office of the United States at Washington, D. C., inquiring in regard to islands within eighteen miles of the Mississippi main shore line, having in mind these supposed islands in the *Louisiana marshes*.

The answer of the Commissioner of the General Land Office of the United States to the letter of Mr. E. H. Wall, Mississippi's land commissioner, is given in full in the record (Record, pp. 1191 *et seq.*, Exhibit No. 2), and from it these Mississippi officers get very little satisfaction as to the extension of their eighteen-mile theory into the St. Bernard peninsula, for the Commissioner says:

"By a reference to the inclosed portion of the map of the State of Louisiana, it will be seen that a line drawn parallel to the north shore line of Lake Borgne and Mississippi sound, and at a distance of six leagues therefrom would include portions of townships 11, 12 and 13 south, ranges 17, 18 and 19 east, and townships 10, 11 and 12 south, range 20 east, St. Helena, meridian, in St. Bernard parish, Louisiana, in which are to be found many tracts of land surrounded by water and which would, therefore, be denominated as islands, *but which are, in fact, hummocks of land surrounded by the marsh*

and swamp in said township, etc." (italics our own), thus putting a quietus to their theoretical creation of islands in the St. Bernard peninsula.

But we have many facts, much stronger than this, showing that the peninsula of St. Bernard is a true peninsula and that the Louisiana marshes form part of the *coast* line of the State of Louisiana not only today, but that the peninsula of St. Bernard was a true peninsula and the Louisiana marshes formed part of it and part of the coast line of the State of Louisiana at the time the Congress of the United States created the State of Louisiana and that the Congress of the United States so regarded it.

Map No. 18, the geological map of the St. Bernard peninsula (Louisiana Atlas of Maps, p. 7) shows the peninsula of St. Bernard to be a true peninsula and it shows a true *Louisiana coast line* on the south shore of Mississippi sound, entirely across the disputed area, or between *Malheureux point* and *Isle à Pitre*. This distinct coast line of Louisiana exists today.

Its existence is fully established by abundant evidence in the record (Record, p. 245, testimony of Capt. J. D. Railey; p. 282, testimony of Mr. Harry Cage; p. 286, testimony of Mr. James M. Breaux). This is further demonstrated by the fact that Mr. Alfred Joseph Monier, under instructions, for the purpose of testifying in this case, *walked along this well defined coast line dry shod* from Petit pass or Malheureux point on the west to Isle à Pitre on the east, except that when he came to these bayous that intersect this coast line, he was transferred across the bayous by Geo. Thiel, who followed along for the purpose in a skiff (Record, p. 324, testimony of Mr. Alfred Joseph Monier; p. 330, testimony of Geo. Thiel; p. 297, testimony of Captain A. C. Ruiz).

If this area, as a peninsula, exists today it certainly existed one hundred years ago when Louisiana was created a State. There has been no building up of the country in the neighborhood of the disputed area since Louisiana was

created a State. The protective levee system, to a point below the parish of St. Bernard, was built as early as the year 1750 and there has been no building up of the country since by alluvion from the Mississippi river, as we will in a moment show; but as a matter of fact the process has been one of subsidence and disintegration.

We have already referred to the ancient maps of this peninsula and called your honors' attention to the fact that they show the coast line as a true coast line and the peninsula of St. Bernard as a true peninsula, maps issued at, or about, and before the time Congress was creating the State of Louisiana.

We have already referred you to the report made by President Thomas Jefferson to Congress in the year 1804 showing that the peninsula of St. Bernard was created by the Bayous Terre aux Boeufs and La Loutre and how that peninsula and the *marshes* then formed part of the parish of St. Bernard.

We now assert that in place of the peninsula of St. Bernard being an archipelago of islands at the time Congress created either the State of Louisiana or the State of Mississippi it was then even a better defined peninsula and the coast line was, if anything, a truer coast line than it is today and *that the process ever since then has been one of subsidence and disintegration*.

In our geological discussion of the St. Bernard peninsula we have shown how the peninsula was formed, when, in past ages, Bayou Terre aux Boeufs first became a lateral branch of the Mississippi river and by extending out into the waters of the gulf of Mexico, and itself dividing into branches, created, by the deposits of alluvion brought down by the annual overflows of the Mississippi river, the lands that form today the peninsula of St. Bernard and the Louisiana marshes. Having seen how this peninsula was thus formed, we must now consider the effect that natural influences have had upon it during the past one hundred years to see if any resulting changes have occurred in its topography, to see if the country is the same as it was when Louisiana was

created a State. This investigation will show that considerable changes have occurred during the last century from which the conclusion naturally follows, when considering the cause and effect, that the St. Bernard peninsula was, one hundred years ago, even a better defined peninsula than it is today and that the coast line of the Louisiana marshes was if anything more distinct.

Dr. Wm. C. Stubbs (State geologist of Louisiana) shows that this alluvial soil of Louisiana by its very nature, originally deposited by its own gravity, is of very loose formation, and that the tendency naturally is for it to become more and more compact as time passed. This process of compacting itself carried with it as a natural result a consequent sinking of the surface level of the soil, which before the erection of the levee system was offset and replaced by the fresh and recurring deposits made by the annual overflow by the river of its banks. As Louisiana became settled, a levee system was gradually extended by its people along the banks of the Mississippi to prevent the annual inundation of the inhabited lands, and this levee system had extended itself to English turn, or English bend, a point on the east, or left. bank of the Mississippi river, and that Bayou Terre aux Bœufs was closed off at its head as early as the year 1750 (Record, p. 129, testimony of Major B. M. Harrod). This extension of the system carried the levees below and south of the parish of St. Bernard as early as 1750, and by the exclusion of the river water prevented the annual deposit of sediment, prevented the annual compensating or offsetting of the annual settlement or subsidence, and the tendency in the southern portion of Louisiana has been and is, with the completion of the levee system to the mouth of the river, one of continual settlement, subsidence and lowering of the surface level of the land, which has been calculated at the rate of from four to five feet a century (Record, p. 339, testimony of Dr. Wm. C. Stubbs). The subsidence at the actual mouth of the Mississippi river, distant say 100 miles from the dis-

puted area, that is, at Port Eads, has been accurately calculated by the United States engineers in charge of the maintenance of the jetty system at South pass, and was found to be one and 54/100 feet between the years 1876 and 1902 (Record, p. 648, testimony of Mr. C. Donovan). This fact was demonstrated by a system of carefully run levels from Cairo, Ill., south to the gulf of Mexico.

These conditions as to alluvial formation, the completion of the levee system, and the consequent subsidence exist in the St. Bernard peninsula, just as in other portions of the State of Louisiana. The record abounds with illustrations of this phenomenon. The most characteristic illustration of this fact of subsidence is the finding of sunken trees, and at times whole forests, ten to one hundred feet below the present surface level of the soil, the trees and their stumps, in a perfect upright position, just as they grew (Record, p. 341, testimony of Dr. Wm. C. Stubbs; p. 359, testimony of Mr. R. R. Barrow; p. 363, testimony of Mr. James C. Hugh; p. 527, testimony of Mr. James Wilkinson; extract from the Transactions of the American Society of Civil Engineers, Record, p. 705).

A striking instance of this evidence of subsidence is also found in the following:

A point on the extreme east sea coast of the St. Bernard peninsula is called "Point Chicot" meaning "stumpy point."

The point as will be seen from map No. 7 (Louisiana Atlas of Maps, p. 2) juts out into the waters of Chandeleur sound which waters are as salty as those of the sea, and entirely too salty to permit of the life or growth of cypress trees. Nevertheless, in 1854, Major. B. M. Harrod, on a visit to that point, saw upright stumps there in the water, and recognized them to be the stumps of cypress trees which had grown there, thus indicating that there had previously been a time when the land had been sufficiently high above the level of the salty sea water to permit of the existence of cypress tree life

at that point (Record, pp. 121 *et seq.*, testimony of Major B. M. Harrod). Now then for the sequel. Mr. George H. Dunbar, who had no knowledge of Major Harrod's experience many years before and did not know that he had previously testified in this case, testified that he visited Point Chicot about fifty years later, about 1902, and, while fishing there, lost his fishing lines by their becoming entangled in these stumps, which were then not observable above the surface of the water (Record, pp. 311 *et seq.*), showing that the tree stumps had settled or sunk under the surface of the water in the intervening half century.

The fact of subsidence in the St. Bernard peninsula, or Louisiana marshes, as the locality is commonly called, is further shown by the gradual extinction of all tree life in that section. At various points, there were oak trees that used to grow, but which are all now either dead or dying (Record, bottom of pp. 272 *et seq.*, testimony of Wm. Dillard; pp. 299 *et seq.*, testimony of Alfred C. Ruiz), thus showing not only the geological tendency, but the actual settlement and subsidence of the St. Bernard peninsula.

The question may be asked, If these lands are sinking, why have they not all sunk out of sight?

In the interior of the Louisiana marshes, where the lands have stayed above water and at tide level, a phenomenon is observed similar to that discovered in other parts of Louisiana similarly situated—that is, that for several feet down the soil is composed entirely of decayed vegetable matter. This answers the above question and is explained by the fact that the annual growth of sea marsh grass by its annual death and decay, forms annual layers of vegetable composition which offset or compensate the continuous subsidence and keeps these lands at tide level or just above water (Record, p. 353, testimony of Dr. Wm. C. Stubbs; p. 526, testimony of Mr. James Wilkinson).

In connection with this demonstration of subsidence Louisiana also contends that topographical conditions ex-

isting in 1803 when Louisiana was purchased from France, or in 1812 when she was created a State, when established by evidence, must control in the decision of this case, and that the record clearly shows that for the past hundred years the St. Bernard peninsula has been undergoing a continuous process of disintegration and subsidence.

As merely another confirmatory illustration of subsidence, we refer to the gradual disappearance of Round island, southeast of the mouth of Pearl river, in the disputed territory, (Record, p. 268, testimony of Mr. William Dillard; p. 253, testimony of Mr. J. D. Railey) and to the gradual disappearance of St. Joseph's island, just north of the deep-water channel (Record, p. 254, testimony of J. D. Railey; p. 243, testimony of Capt. Thomas Summerall; p. 544, testimony of Capt. A. S. Cowand, etc.).

Another influence that has tended to affect the topography of the St. Bernard peninsula, in the matter of producing and hastening its disintegration has been that of the storms which have prevailed in that region for the past one hundred years.

Mr. Isaac M. Cline, forecaster of the United States Weather Bureau located at New Orleans (Record, pp. 505 *et seq.*) testifies as to the dates of the storms affecting the St. Bernard peninsula, so far as records thereof had been kept, and the record shows their occurrence to have been frequent, and that they were of very destructive effect.

In connection with the testimony of Mr. Cline, extracts were offered in evidence from the reports of the Superintendent of the United States Coast Survey for the years 1852 and 1853, (Record, pp. 512 *et seq.*), showing the effect of storms occurring in those years in the general region of the disputed territory.

The record also contains extracts from De Bow's Review, List of Hurricanes, 1700 to 1856, and clippings from 1837 to 1893, taken from the New Orleans Picayune, a daily

newspaper published in that city (Record, pp. 1036 *et seq.*, document No. 36).

Even Mr. Thomas Jefferson, then President of the United States, in a message to Congress, November 14, 1803, in reference to the recently acquired province of Louisiana, refers to the destructive effect produced by hurricanes in the parish of Plaquemines, which adjoins the parish of St. Bernard, and is of the same geological formation, and in the same general geographical location (Record, p. 1015, document No. 19). The record abounds with the testimony of individuals as to the general process of disintegration produced by the prevailing storms in the disputed territory (Record, pp. 242 *et seq.*, testimony of Capt. Thomas Summerall; pp. 250 *et seq.*, of Capt. J. D. Railey; pp. 259 *et seq.*, of Mr. Chas. Sanger; pp. 266 *et seq.*, of Mr. William Dillard; pp. 293 *et seq.*, of Capt. Alfred C. Ruiz; pp. 309 *et seq.*, of Mr. George H. Dunbar; pp. 363 *et seq.*, of Mr. James C. Hough; pp. 404 *et seq.*, of Mr. John McGraw; pp. 529 *et seq.* and pp. 671 *et seq.*, of Mr. James Wilkinson; pp. 544 *et seq.*, of Capt. A. S. Cowand; pp. 662 *et seq.*, of Mr. J. S. Beckwith; pp. 669 *et seq.*, of Mr. Ernest Cucullu; pp. 681 *et seq.*, of Mr. Charles Marshall; pp. 710 *et seq.*, of Mr. Albert Estopinal, Jr.; pp. 829 *et seq.*, of Mr. Henry T. Goodloe; pp. 837 *et seq.*, of Mr. Campbell K. De Lappe; pp. 838 *et seq.*, of Mr. Edward M. Wallace; pp. 862 *et seq.*, of Mr. James K. Henley; pp. 864 *et seq.*, of Mr. John Conner; pp. 868 *et seq.*, of Mr. Patrick M. McDonnell, and pp. 872 *et seq.*, of Mr. Frederick M. Weed).

The topographical and geological conditions immediately west of the marsh or delta of the Mississippi river are naturally the same, in a general way, as those of the St. Bernard peninsula. Similar results in the process of disintegration were produced by storms in that locality as was the case with the storms in St. Bernard. Additional evidence to this effect is found in the record (Record, pp. 323 *et seq.*, testimony of Mr. Edmond McCullom; pp. 388 *et seq.*, of Mr. Adam Duet;

pp. 393 *et seq.*, of Mr. Joseph Tomessi; pp. 400 *et seq.*, of Mr. Julien Labat; pp. 401 *et seq.*, of Mr. E. L. Lecompte).

On this proposition of the case, the State of Louisiana, therefore, maintains that the St. Bernard peninsula is a peninsula today; that it was even a better defined peninsula one hundred years ago when she was created a State, and formed at that time what was considered the main coast line of the State of Louisiana in that locality, measuring from which, in the mind of Congress, Louisiana should get all islands within three leagues of her coast, and that the record clearly shows that the peninsula of St. Bernard was not in the mind of Congress an archipelago of islands which Congress intended to give to Mississippi when creating her a State on December 10, 1817.

Having thus conclusively shown that the claim of the State of Mississippi to the area in dispute cannot be seriously considered, first, because the islands in that area had previously been given by Congress to the State of Louisiana; and second, because the peninsula of St. Bernard was a true peninsula in the mind of Congress and not an archipelago of islands, we are now led to consider the further claims, if any, that Mississippi urges, giving, or even seeming to give, a basis for her present contention. As we understand them these claims are :

1st. That the islands which Congress intended to give to the State of Louisiana are other islands in the open gulf of Mexico beyond the disputed territory and that therefore Louisiana had no prior title to the islands in the disputed territory when Mississippi was admitted into the Union, December 10, 1817.

2d. That the State of Mississippi has title to the disputed territory because she has exercised acts of sovereignty over it and heretofore regarded it as hers.

The first of these is the more important proposition and we shall now show that there is absolutely no basis justifying such a contention.

The words of the act creating Louisiana a State and which affect the proposition are:

"*thence down the said river (Mississippi) to the River Iberville; and from thence along the middle of said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico; thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast.*"

The sustaining of the correctness of the Mississippi construction would do away entirely with the recognition of the deep-water channel sailing line as the true boundary between the States, a conclusion that could not be reached in the face of the facts in the record.

Then the words of the act do not admit of any such construction. The clause, "*including all islands within three leagues of the coast*" refers to the *whole* coast of the State and we have shown how the peninsula of St. Bernard formed an integral part of the *coast* of the State of Louisiana. It was not necessary for the line of demarcation between the States to reach the open waters of the gulf of Mexico before the *coast* of Louisiana came into existence. As a matter of fact the waters of Mississippi sound were considered as the sea or as forming part of the sea and gulf of Mexico at that time. We have already shown that Mississippi sound and Lake Borgne are salt-water bodies of water and true parts of the sea or gulf. Congress in its description so regarded these bodies of water, for in its boundary description it carried its line from the middle of Lakes Maurepas and Pontchartrain *immediately* to the gulf of Mexico, thus indicating that it considered that to be the next body of water to be reached in the extension of the southern boundary of Louisiana around to the westward until it reached the Texas line. We have also shown, under our discussion of international law, how these bodies of water, Mississippi sound and Lake Borgne, are true arms of the sea. It is only natural to presume that Congress so regarded them. That they were re-

garded as part of and forming the beginning of the sea at that point is further established by the fact that on the early maps of that section of the country these bodies of water, with the exception of Lake Bongue which is not mentioned in the acts of Congress, are given no separate individuality, have no names of their own and are therefore recognized only collectively as being and forming part of the sea or gulf of Mexico. As a matter of fact it was not until the year 1866 (map No. 29 Louisiana Atlas of Maps, p. 23) that the body of water known today as *Mississippi sound* was given that name. Even in the survey of the coast of the State of Mississippi in the year 1839 by Mr. John Wheeler, engineer, under authority of the State legislature of Mississippi (Record, p. 1148) no name is given on the sketch to the body of water known today as Mississippi sound.

It is therefore clearly to be presumed from this that Congress regarded the waters of Mississippi sound as being the gulf of Mexico in its reference to that body of water in the act of Congress creating the State of Louisiana; that the *coast* of the State of Louisiana began along the north shore of the St. Bernard peninsula, or on the south shore of the waters today known as Mississippi sound; and that it would be absurd to suppose that the islands referred to by Congress in the act admitting Louisiana into the Union as a State were solely those islands to the south of the State. If we take this theory of the State of Mississippi and reduce it to its natural elements it proves itself to be absurd. In order to carry out the present Mississippi idea to its full extent it is necessary that, working backwards, the line, extending from the mouth of Pearl river, should extend due south a distance of eighteen miles. It will be seen from the map Mississippi A (Record, p. 88) that it is there admitted that this extension that distance of this line *due south* would conflict with and run into what is admitted to be the *mainland* of Louisiana; and these theorists are therefore compelled to back up several miles around *Malheureux point* and go eastward along the

Louisiana coast, or St. Bernard peninsula, until they come to Nine-mile bayou down which they project their line into the center of the *Louisiana marshes*. The extension of this line eastward, then bisects and runs through various *hummocks* of marsh land, introducing new elements of uncertainty, because if the *marsh hummocks* are *islands*, then in many instances the claim of the State of Mississippi only takes parts or portions of these islands, when in their theory Mississippi would be entitled to *all* of the islands, and a difficult question naturally arises in determining to which State these divided *islands* (?) would really belong; for if we follow this theory further it comes as a natural result that when Louisiana was created a State her boundary must have run directly south from the mouth of the Pearl river. The projection of this line would have cut the peninsula of St. Bernard into two parts, and would have given to Spain the better or greater part, not only of that parish, but of the parish of Plaquemines to the south in order for this line extending south to reach the open waters of the gulf of Mexico; thus this theory by the process of *reductio ad absurdum* shows its own fatal fallacy.

This therefore brings us to a discussion of the next question to be considered:—

"*That the State of Mississippi has title to the disputed area because she has exercised acts of sovereignty over it and heretofore regarded it as hers.*"

We have already referred to and cited such an overwhelming mass of evidence in the record, showing not only Louisiana's affirmative exercise of ownership of the disputed territory, but also the official recognition by the State of Mississippi of Louisiana's ownership of the disputed area, that it would be like painting the lily and perfuming the violet to now disprove Mississippi's acts of sovereignty and ownership, yet our treatment of the case would not be complete

did we not fully explain and account for the few instances in which the State of Mississippi might appear to be claiming rights in the disputed area. These instances are few and a full knowledge of, and careful search through, the record shows the following to be the only occasions when the State of Mississippi might appear to be in any way referring to the disputed area:

1st. In her legislative enactments wherein she makes use of, and in her judicial decisions where she refers to, the words

"*thence westward including all islands within six leagues of the shore.*"

This is explained by the fact that there were in existence a number of islands, to-wit, Petit Bois, Horn, Ship, Cat, Round, and Deer islands, which were within six leagues of the Mississippi shore, but which were outside of the disputed area, and are the islands to which reference was intended to be made in such legislative enactments and judicial decisions.

2d. In her legislation granting to Congress a right to erect a light-house on Half Moon island.

This instance was on February 17, 1842, when the legislature of Mississippi passed an act entitled "An act giving consent of this State to the United States to purchase a site in St. Joseph's or Half Moon island for the purpose of erecting a light-house thereon" (Record, p. 1819). The fact that the State of Mississippi here granted to Congress her consent to erect a light-house on Half Moon island would perhaps, on the first blush, indicate an assumption of ownership on her part of Half Moon island, yet Mr. E. H. Wall, the State land commissioner, testified (Record top of page 1758) that the State of Mississippi never had on the books of her State land office any record of ownership of

lands in townships 10 south, range 17 east, 11 south, range 17 east, 10 south, range 18 east, 11 south, range 18 east, which are the four townships that form the lands comprising Half Moon island. How then can we account for this action by the State of Mississippi, when it is so at variance with her otherwise acquiescent recognition of Louisiana's ownership of all the disputed area of which this island forms but a small and unimportant part? An answer and full explanation is readily found in the fact that the legislature of the State of Mississippi did not know that *St. Joseph's island* and *Half Moon island* were two separate and distinct islands, the former being owned by Mississippi and the latter being owned by Louisiana, and that the confusion in regarding them as one and the same island was due to legislative ignorance of the subject, as appears from a resolution of the Mississippi legislature, approved February 22, 1842, or five days later, entitled "A resolution to Congress concerning the erection of a light-house on St. Joseph's island," and reading as follows:

"*Resolved by the legislature of the State of Mississippi*, That our Senators in Congress be instructed, and our Representatives requested to unite their best exertions to obtain a sufficient appropriation for the erection of a light-house on St. Joseph's, *sometimes called Half Moon island*, situated in Lake Borgne, and lying between the mouth of Pearl river and the bay of St. Louis" (Record, p. 2124, Mississippi document No. 102). (Italics ours.)

St. Joseph's island was never called Half Moon island. They are, were, and always have been separate and distinct islands. This reference, therefore, to "St. Joseph's, as to being *sometimes called Half Moon island*" shows that no special significance can be attached to the mention by Mississippi of Half Moon island so far as evidencing any claim or ownership as it in fact indicates that the reference to Half Moon island was alone due to ignorance and confusion. As a matter of fact on November 19, 1857, an act

of the Mississippi legislature was approved authorizing the United States to expropriate St. Joseph's island for light-house purposes, and no reference is made therein to Half Moon island (Record, p. 2128, Mississippi document No. 106). In due course a light-house was built by the United States on St. Joseph's island, but owing to the fact that this St. Joseph's island has practically washed away and disappeared (Record, p. 544, testimony of Capt. A. S. Cowand), there is no light-house there now, it having been removed to the mainland, and yet Mississippi contends that no changes have taken place in this country in the last hundred years.

3d. The next instance that might be construed as indicating an assumption of sovereignty by Mississippi over a part of the disputed area was where an inquest was held and a preliminary hearing had in a case where a drowned man was thought to have been murdered. Joseph, Louis and John Kennedy, brothers, all citizens of Biloxi, Mississippi, were on board a sailboat going from Mississippi to the Louisiana marshes, and when the vessel, in a storm, was passing one of the buoys which marked the deep-water channel, John Kennedy fell overboard and was drowned. In a search instituted by members of his family, his body was found washed up in the Louisiana marsh, and was naturally taken home to Biloxi, Mississippi, for burial. As some bruises were discovered on the body, the two brothers, Louis and Joseph Kennedy, were arrested by the Mississippi authorities, and at the preliminary hearing before the justice of the peace, were honorably discharged.

Mr. Louis Kennedy (Record, p. 1266) testified that he was told his brother was drowned or fell overboard off *Cat island*, and although he was on the boat at the time, he did not know where he was, because of lack of knowledge of the locality, but that it was marked in the family Bible that he was drowned at Cat island. The extract in the family Bible reads as follows :

"Drowned on Wednesday, October 26, 1886, at 2 o'clock in the morning at Cat island. John Callavati Kennedy" (Record, p. 1267).

Joseph Kennedy, who was pilot, says a gale was blowing from the north, he was pilot; and had just passed a black-and-white buoy, off Cat Island spit, when his brother slipped on a rope which rolled and he fell overboard. At best, this was very close to Mississippi territory, the only written record shows the incident to have occurred *at Cat island*, which is really in Mississippi, it was only natural that the body should be taken back by the family for burial at their and his *home* at Biloxi, Mississippi, and this assumption of jurisdiction if it be such to, under these circumstances, hold an inquest and preliminary hearing where the accident may have occurred at Cat island in Mississippi territory, is to our mind no fair test of the exercise of police power and sovereignty for the purpose of fixing State boundaries.

Mississippi has also introduced a multitude of documents in reference to her licensing of vessels to fish oysters. These records do not in any way show jurisdiction, or even an attempt to exercise jurisdiction, over the area now in dispute. Each vessel, operating in the oyster business in Mississippi, had to procure and pay for a permit or license to do so. The State of Mississippi had her own oyster waters; and it was, as to the fishing in these waters, that these licenses referred. These Mississippi oystermen fished in Mississippi waters; and, until the enactment and enforcement of the Louisiana oyster law prohibited it, they were welcome to fish oysters in Louisiana waters; and not only fished there but overran the whole Louisiana marsh, to the mouth of the Mississippi river, over a hundred miles beyond the disputed area of today.

4th. The last instance shown by the record wherein the State of Mississippi, or any of her political subdivisions,

might be presumed to cherish and entertain ideas of ownership in the disputed area is found in the case of the official map of Hancock county, State of Mississippi (Mississippi map No. 62, Louisiana Atlas, p. 65).

Hancock county forms the southwest corner of the State of Mississippi, and its western boundary being Pearl river, it adjoins the State of Louisiana. It is the most western of the Mississippi coast countries and therefore lies immediately north of the disputed area. The map in question was made by Mr. J. L. Henderson, a land agent in that county, in 1895; it was accepted, in December, 1895, as the official map of Hancock county, Mississippi, by the board of supervisors of said county, which body in consideration of his making the map relieved Mr. Henderson of liability on his certain note due the county and held by the sheriff for collection. We were able only to obtain a blue print of the map as the original is on file in the county court-house and is the only official county map there.

An examination of the map shows that the county of Hancock, State of Mississippi, makes no claim whatever to the ownership of lands in the St. Bernard peninsula, as claimed by Mississippi, today, in her defense of this suit. It does show a reference to St. Joseph island and Half Moon island, which might indicate that she claimed to own both of these islands. A reference to the map will show however that Mr. Henderson must have made it up by simply compiling the township plats on file in the office of the commissioner of the State land office at Jackson, Miss. This idea is confirmed by the following facts: The map simply designates Half Moon island and gives its area and direction from the mainland without subdividing it into sections, townships and ranges, and as explaining where Mr. Henderson got his data, from which to make his official map of Hancock county, Mississippi, and as accounting for the appearance of Grand island there, it will be noted that there is on file, in the office of the commissioner of the State land office at Jackson, Missis-

sippi, a plat of a township survey called, T. X, R. XV W., land district, east of the island of New Orleans and west of the Pearl river (document, Louisiana, 1, Record, p. 1190). A comparison of this township plat with the Henderson map will show that Mr. Henderson must have gotten his data as to these islands from this township plat. Now in truth the township plat does not indicate that the islands mentioned are in, or form any part of, the State of Mississippi. The plat is based on surveys made in the year 1824 of what is now called *Lower Point Clear* and which is really a part of the State of Mississippi. The lands forming this point are sectionized, but the islands are not. It is between these two islands that the deep-water sailing channel line runs and the survey really merely indicated the general location and area of the islands. There was a resurvey of the area in this township as will appear from the above document, Louisiana No. 1, approved September 12, 1846, and no mention is then made of these islands.

If Grand or Half Moon island was part of the township, it would have been subdivided, while the subdivision was being made. That it formed no part of the Mississippi township in question, is shown by the detailed survey and sectionizing of the island, made in 1845, when the island was found to be formed of parts of four Louisiana townships; namely:

Section 36, township 10 south, range 17 east.

Section 1, township 11 south, range 17 east.

Sections 29–31–32–33, township 10 south, range 18 east.

Sections 5 and 6, township 11 south, range 18 east.

Approved July 31, 1846, by the surveyor general of Louisiana (Record, 1047*a*, document 38).

This explanation we think accounts for all the apparent instances where the State of Mississippi would appear to have wandered from her policy of quasi-studied recognition of the priority and greater strength of Louisiana's claim to the disputed area.

CONCLUSION.

We have thus endeavored to meet and discuss what we consider to be the only salient points in this cause. The record is very, indeed unnecessarily, voluminous in our opinion. The evidence and testimony having been taken before commissioners appointed by this honorable court, a great deal of matter has been thrust into the case which we deem inadmissible, as irrelevant and not pertinent to the issues. The commissioners having no power to rule upon our objections and exceptions to evidence, your honors must decide upon those points. Our opponents have, for instance, introduced a great deal of evidence in the nature of opinions of citizens of Mississippi as to the boundaries of the States, all of which we regard as utterly inadmissible. There were many other similar instances, to which we deem it unnecessary to refer in detail. Attempts were also made by the counsel for Mississippi to establish certain propositions in which, in our opinion, they have signally failed. Not having as yet been favored with a copy of their brief, we cannot say whether they will still seriously persist in their efforts of contention on those points. Considerable space, in the record, is devoted by them to an endeavor to show that, should your honors decide this cause in Louisiana's favor, the commerce of Mississippi's sea or gulf ports would be seriously menaced and interfered with. We apprehend that even if this should be the case, it could not affect the decision of your honors in regard to the rights of Louisiana in the premises. But as the navigable waters would still be open to Mississippi commerce, we cannot see any possible damage to Mississippi to result therefrom, except to prevent Mississippi fishermen from poaching or pirating oysters from Louisiana territory. Nor can we see why, if it be true that Louisiana's seacoast is now much longer than that of Mississippi, there is any reason why your honors should therefore

take any of Louisiana's territory away from her and give it to Mississippi to increase her coast or shore line. An abortive effort was also made to try and show that the peninsula of St. Bernard, or the now archipelago of islands therein, was formed by silt and alluvion from the Mississippi river since the admission of Louisiana as a State. No proof was administered to establish this theory, but, on the contrary, it was shown by us that since the year 1750, when the levees were built on the right bank of the river in front of the parish of St. Bernard, no alluvion has passed to the eastward of that parish, but all the alluvion has been discharged through the mouths of the Mississippi river and has been borne by the littoral current to the westward, and not to the eastward, as claimed by our opponents (testimony of C. Donovan, Record, p. 652). We have also shown that the disintegration of the peninsula was due to violent storms, overflows, subsidence, &c., which have occurred since the admission of Louisiana into the Union. That these changes in the territory have had no effect in altering the ownership and dominion of the territory is plain under the principles of international law in regard to avulsion.

Fodéré, in section 808, pages 365 *et seq.*, discusses at length the principle and doctrine of alluvion in lakes and arms of the sea, as forming a part of international law. Speaking of alluvion in waters or lakes separating two different States, he quotes with approval Vattel on the subject, who says: "Si ces accroissements ne sont pas insensible, si le lac, franchessant ses bords, inondait tout a coup un grand pays, cette nouvelle portion du lac, ce pays couvert d'eau appartien drait encore a son ancien maitre. Surquoi en fonderait on l'acquisition par le maitre du lac? L'espace est trés reconnaissable quoiqu'il changé de nature, et trop considérable pour presumer que le maitre n'ait pas eu l'intention de se le conserver malgré les changements qui pourraient y survenir;" and Vattel, approved by Fodéré, adds "Que si quelques terres voisines du lac sont seulement inondées par

les grandes eaux, cet accident passager ne peut apporter aucun changement à leur dépendance" and again "Par les memes raisons, si les eaux du lac, penetrant par une ouverture dans le pays voisin, en forment une baie ou en quelque façon un nouveau lac joint au premier par un canal, ce nouvel amas d'eau et le canal appartientrent au maitre du pays dans lequel ils se sont formés. Car ces limites sont fort reconnaisables, et on ne presume point l'intention d'abandonner un espace si considerable, s'il vient à être envalie par les eaux d'un lac voisin." In section 810, pages 368, 369, Fodéré quotes with approval from "M. d'Argont a la Chambre des Paris de France, (1828)" Journal Administratif as to the ownership of territory on the sea either increased or diminished by the action of the waters of the sea: "L'alluvion maritime au contraire apparaitra souvent tout a coup; un coup de mer la produira, un autre la fera disparaitre; elle sera composée des matieres que la mer repose, souleve, et delaisse, des sables et galets qu'elle charrie. La presence des coquillages, qui ne peuvent vivre que dans l'eau salée et les herbes salines qui croitront à sa surface attesteront d'une maniere certaine qu'elle est un lais et relais, et que consequent le rivage qui la borde est exclusivement maritime."

Translation.

"If the encroachments are not imperceptible, if the lake, overflowing its banks inundates all at once a large section of country, this new portion of the lake, this portion of the land covered with water, still belongs to its former owner upon what is founded the acquisition by the owner of the lake? The space of land is very recognizable, although it has changed its nature, and it is too considerable in extent to presume that the owner has not had the intention to keep it, in spite of the changes which have come over it." * * * "That if some lands bordering on a lake are only inundated by high tides or waters, this transient occurrence does not

bring any change in their dependence (or dominion)" * * * "For the same reasons, if the waters of a lake, penetrating through an opening in the neighboring land, and forming in it a bay, or in a certain manner a new lake joined to the first by a canal (or channel), this new body of water and the canal or channel belong to the owner of the land in which they are formed. For these boundaries or limits are very recognizable and it is not to be presumed at all that the intention was to abandon so considerable a space (of territory) if they became inundated by the waters of a neighboring lake." * * * "Maritime alluvion, on the contrary, appears often suddenly; one force of the sea will produce it, another will cause it to disappear; it will be composed of substances which the sea deposits, raises or lowers, sands and debris which it carries. The presence of shells and shell fish which cannot live but in salt water and the salt grasses which grow upon its surface, show in a positive manner that it is the rise and fall of the tide, and that consequently the shore is exclusively maritime."

Thus establishing the correctness of the Louisiana contention that the fact that the forces of nature have helped to partially destroy the peninsular formation of the St. Bernard peninsula does not affect Louisiana's ownership of that body of land.

As a matter of fact, as we have previously stated, it is alone the clause, referring to the islands, in the act of Congress creating the State of Mississippi, that has given rise to the boundary dispute at issue in this case. It is not to be presumed that the Congress of the United States intended to make a conflict of boundaries when there is a possible construction of the acts of Congress which would reconcile the apparent inconsistencies.

Louisiana contends and has always contended that there is an interpretation of the acts of Congress, creating the States

of Louisiana and Mississippi respectively, that would do away with all of the conflict, an interpretation that we really believe faithfully and truthfully represents the intention of Congress at the time it created the State of Mississippi.

We have heretofore shown and the maps in the record establish the fact that there is a chain of *white sea sand islands*, running from the west shore of Mobile bay, in the State of Alabama, westward to, and inclusive of, Cat island, in the State of Mississippi. These are the islands which by their chain form the southern boundary of Mississippi sound and they are all relatively of the same distance from the shore of the States of Mississippi and Alabama. These islands, beginning at the eastern end are Dauphin, Petit Bois, Horn, Ship, and Cat islands. There are two other islands, namely, Round island, off Pascagoula, and Deer island, off Biloxi, both in the State of Mississippi and lying inside of this chain of islands. If Congress referred to this chain of islands, as being those within six leagues of the shore, when she adopted her act creating the State of Mississippi, it follows that there would be no conflict with the prior existing boundaries of the State of Louisiana, provided the deep-water sailing channel line was taken as the correct boundary between the States of Louisiana and Mississippi. That this is so, that Congress was really referring to these large and important islands, on the south of the State of Mississippi, when it admitted her into the Union, is shown by the fact that in the act of Congress creating a separate territorial government for the eastern part of the Mississippi Territory and calling said Territory Alabama, the act being approved March 3, 1817, (Record, p. 2121, Mississippi document No. 107), the same language is used as will be seen from the following extract concerning the western and southern boundary of the Territory of Alabama—"thence due south to the gulf of Mexico, thence eastwardly *including all islands within six leagues of the shore* to the River Perdido, and thence up same to beginning." We think from this

that it clearly and conclusively follows that it was to this chain of islands that Congress referred, when it admitted Mississippi into the Union, and that it had no intention whatsoever of giving Mississippi any right or pretense to a claim of ownership in the *sea marsh islands* south of the deep-water sailing channel line in the disputed territory and which had been previously given by Congress to the State of Louisiana.

In concluding, therefore, our discussion of this whole subject-matter and in thanking your honors for your kind indulgence, in bearing with us in the long space it has taken to present the many phases of our case, we submit that the title of the State of Louisiana to the whole of the disputed area has been established clearly by the words of the acts of Congress and by the intention of Congress in creating, respectively, the States of Louisiana and Mississippi; but if there be in the minds of your honors any lingering doubt on this subject, as we have already stated, then we say that by the adoption of the deep-water sailing channel line as the proper boundary between the two States, in this region, the correctness of which proposition we have established beyond question, Louisiana's ownership to the disputed territory, in its entirety, is again established; and even then, if there still be any doubt upon the subject, that the record contains an abundance of evidence showing that Louisiana has acquired a title to the disputed territory by prescription, and that her ownership of the same cannot now be successfully contested by the State of Mississippi. And we therefore confidently submit our case to your honors for final consideration and decision, praying that the deep-water channel sailing line extending from the mouth of the most eastern branch of Pearl river north of Half Moon, or Grand island, through Mississippi sound, between Cat island and Isle à Pitre, north of Chandeleur islands into the open waters of the gulf of Mexico be decreed to be the proper boundary between the two States of Louisiana and Mississippi in that

region and that it be in due course properly buoyed and publicly designated as such; that the State of Louisiana be quieted in her ownership, sovereignty and possession of all the region south of said boundary line, and that the State of Louisiana recover her costs in this case unjustly sustained.

Respectfully,

WALTER GUION,
Attorney General of the State of Louisiana.

JOHN DYMOND, JR.,
FRANCIS C. ZACHARIE,
Of Counsel.